

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 10 of 2001

In the matter of
Compliance of Order dated 16th August, 2002 regarding purchase of power from
bagasse based co-generation projects in respect of
M/s Kay Pulp & Paper Mills Ltd.

ORDER

Dated 9th August, 2004

Under their Application received on 8th October, 2003 M/s Kay Pulp and Paper Mills Ltd. (KPPM), Dist. Satara have primarily sought compliance by Maharashtra State Electricity Board (MSEB) of the Commission's Order dated 16th August, 2002 regarding purchase of power from bagasse and other non-fossil fuel based co-generation projects. Their prayers are as follows:

- (a) MSEB should be directed to extend the facility of Letter of Credit (LC) without further delay;
- (b) MSEB should be asked to pay the invoice amount as on date along with interest;
- (c) MSEB should be directed to refund the minimum demand charges recovered from their power export bills;
- (d) MSEB should settle the interest claims for delayed payment without further delay;
- (e) The Commission may advise regarding the procedure regarding banking, and wheeling and transmission losses.

2. In their Petition, KPPM have stated that, under its Order (which also included Case No. 10 concerning KPPM's 6 MW based co-generation projects), the Commission has laid down various stipulations to be followed by MSEB. However, MSEB are unable to adhere to the stipulated schedule for making payment for the power exported from their project. The payment mechanism has also been bypassed. Payments have never been made within 45 day, and the bills are annexed to the Petition. Moreover, the interest claims for delayed payment over 45 days have not been met. As provided in the Order, KPPM have indicated their option to MSEB to avail of LC facility vide their letter dated 13th March, 2003, but there has been no response.

3. The Petition states that MSEB have recovered around Rs. 21.26 lakhs as Minimum Demand Charges for the un-expired period of the HT agreement with KPPM as consumer for the period from August 2002 to March 2003 from the first and subsequent exported power bills of the co-gen project. This is unfair and unjustified. Moreover, no assistance or service was provided by MSEB during this period prior to synchronizing their project.

4. KPPM have also stated that the guidelines for banking, and for wheeling and transmission loss charges have also yet to be indicated by the Commission, and that this may be done.

5. In their Reply dated 12th March, 2004 with reference to the opening of LC as payment security, MSEB have stated that KPPM's insistence on opening LC for Rs.84 lakhs would be contrary to the Commission's Order. Giving details of the monthwise export of power by KPPM, MSEB have stated that the average monthly bill for the year 2003 works out to only Rs. 7.55 lakhs. In four months during that year, there was no generation, and on three occasions it was minimal. MSEB have also submitted that, as a statutory body, they cannot discriminate as between various developers, and it would be impractical and financially unviable to provide LC to all such developers. Further, grant of LC facility required MSEB to earmark large funds as required by the concerned banks.

6. With regard to payment within 45 days, MSEB have stated that various accounting procedures have to be followed and checks conducted as a result of which the stipulation of 45 days needs to be modified, for which they are submitting a separate Application. As regards payment of interest for delayed payment, MSEB have stated their computation difficulties, including the variations in tariffs which were revised at different times during the relevant period. They also stated that KPPM have claimed interest at an inflated rate.

7. As regards recovery of minimum demand charges, MSEB have stated that these relate to the status of KPPM as a HT consumer prior to the genesis of the co-generation project, and has no nexus with it or with the Commission's Order and concerning the present Petition. After commissioning of the cogeneration project, KPPM desisted from continuing with MSEB as a HT consumer. However, the minimum period of the agreement signed between the parties on 12th April, 1994 was for 7 years from the commencement of supply. It was further extended for one year upto March 2002. Under clauses 9(a) and 10(a) of the Agreement, MSEB have rightly levied the minimum charges. Read with Condition No. 22 of MSEB's Miscellaneous Charges and Conditions of Supply, KPPM have been levied minimum charges for the unexpired period of the agreement. It had also been informed to KPPM at a meeting on 23rd May, 2001 that these dues would have to be paid before commissioning of the co-generation project. However, KPPM had delayed the payment and, thereafter, agreed to settle this amount against the generation invoices raised. In fact this delayed the synchronization of the co-generation project.

8. The matter was heard on 23rd March, 2004. Shri Niraj Chandra, Managing Director, KPPM elaborated on the contents of the Petition and the difficulties faced by KPPM on account of MSEB not having opened LC in spite of the clear stipulations in the Commission's Order. He submitted that the project has faced various difficulties as a result of which their generation was erratic. This has been compounded by the fact that KPPM are finding it difficult to raise funds because of the delay in payment by MSEB themselves. However, in case KPPM are not entitled to Rs. 84 lakhs, MSEB should have at least opened LC for the amount as computed by them, but have not done even that. The Commission observed that, in any case, there seems to be a mistake in the claim of Rs.84 lakhs considering the dispensation given in the Order and the 6 MW capacity of the generation plant.

9. Shri Niraj Chandra also reiterated the grievance of KPPM with regard to the delay in payment of interest, and the recovery of minimum demand charges from out of their bills for the exported power.

10. Ms Deepa Chawan, Counsel for MSEB, reiterated the contentions set out in MSEB's Reply with regard to the opening of LC and the computation of interest on delayed payment. She also submitted that it was difficult for MSEB to adhere to the payment period of 45 days, which should be extended to 120 days. She submitted that these and other matters have been raised in a separate

Application which has now been submitted by MSEB to the Commission for modification in the Order dated 16th August, 2002. With regard to the rate of interest to which KPPM are entitled, she submitted that there is a dispute inasmuch as the various rates communicated to them by SBI are at variance with the rate claimed by KPPM. She stated that the entire payment in respect of the period upto December 2003 has now been made and, if KPPM are agreeable, then the matter of interest rate applicable could be worked out with them on the basis of the information received from SBI. Shri Niraj Chandra responded that he would have no objection to doing so

11. The Commission notes that, prior to the hearing, on 12th March, 2004, MSEB have indeed filed a separate Application seeking modifications and clarifications of certain stipulations in the Order dated 16th August, 2002 and related Orders, referring also to KPPM's present Petition and with KPPM as a Respondent. At the hearing held in that matter on 22nd April, 2004, in which KPPM also participated, several issues, including MSEB's objections to opening up of LC, modification in the payment schedule, and penalty for erratic supply were deliberated. This has been set out in detail in the Clarificatory Order dated 14th June, 2004 on that Application (Case No. 62 of 2003). In the Clarificatory Order dated 14th June, 2004, at paras 10 (a) and (b), the Commission has stated that:

"In the light of the above the Commission disposes of this Application with the following clarifications and observations:

- (a) The Order dated 16.8.2002 envisages, for payment security, that "a LC (irrevocable and revolving) in favour of the developer for an amount equivalent to the average monthly bill shall be opened at the cost and option of the developer". The Commission confirms that the cost to be borne by the developer does not include the margin money and related requirements sought by the banks and financial institutions from MSEB for opening of LC.*
- (b) The Order stipulates that the due date for payment of monthly energy bill by MSEB to the developers shall be 45 days, and interest is payable thereafter. The Commission clarifies that this would not preclude MSEB and individual developers from entering into mutual agreements for a different time schedule. However, keeping in view the spirit of the Order, in no case should such agreement provide for less than 90% payment within 45 days, or more than 120 days for payment of the balance, after which interest would be attracted."*

No substantive modification of the Order was agreed to by the Commission.

12. Accordingly, MSEB would have to open LC as per the option provided in the principal Order and in favour of KPPM as payment security to the extent of their entitlement, the basis for which is also spelt out in that Order. The payment schedule would also apply accordingly, subject to the clarification given on 14th June, 2004.

13. As far as the provisions for banking, wheeling and transmission loss charges are concerned, the Commission has already spelt out its position in the Order dated 16th August, 2002 and, as stated in the Order, the Commission would be dealing with some of these matters further in due course.

14. The issue of minimum demand charges recovered relating to KPPM as HT consumer has no nexus with the Order dated 16th August, 2002, and may be agitated separately in the appropriate forum.

15. The Order dated 16th August, 2002 is also clear as to the basis to be adopted for the rate of interest for delayed payment. The Commission expects MSEB and KPPM to resolve the position together expeditiously, as agreed during the hearing.

16. Before disposing of this Application with the above observations, the Commission notes that, during the hearing on MSEB's separate Application and as minuted in the Record of Proceedings, KPPM were given liberty to withdraw the present case and asked to submit a letter accordingly. Under their letter dated 2nd August, 2004 in response to a reminder from the Commission, KPPM have stated that, since no final decision has been taken by MSEB and another meeting is yet to be fixed, they would revert to the Commission only thereafter. Hence, rather than prolonging this process, the Commission has decided to dispose of this Petition. MSEB should file a compliance affidavit with regard to opening of LC and fixation of rate and payment of interest, if not done already, within one month with a copy to KPPM.

Sd/-
(Jayant Deo)
Member

Sd/-
(Pranod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

Sd/-
(A.M. Khan)
Secretary, MERC