

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.

CASE No. 08 of 2003

*In the matter of Petition of M/s Ispat Profiles India Limited
for waiver of various dues and other reliefs.*

Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member

ORDER

Dated: **21st July 2003**

M/s Ispat Profiles India Limited, Mumbai have filed a Petition dated 6th February 2003 citing Regulation 74(h) of the MERC (Conduct of Business) Regulations, 1999, praying for the following directions to the Maharashtra State Electricity Board (MSEB):

- a) *To waive the outstanding minimum demand charges included in the outstanding.*
- b) *To waive the interest and delayed payment charged form April 1997 onwards.*
- c) *To waive all electricity duties levied from April 1997 onwards.*
- d) *To direct the Respondent to settle the payment of remaining arrears, i.e. after considering the above three requests, by granting 60 instalments after 5 years from the restart of operations carrying no interest.*
- e) *To waive the SLC and other charges for reconnection of electric supply at the plant.*
- f) *To direct the Respondents not to charge the minimum demand charges for a period of 5 years from restart.*
- g) *To supply power at a rate close to the cost of supply at Extra High Voltage (EHV) and provide bulk discount in the future bills.*
- h) *To direct the Respondent to provide immediate reconnection of limited power to plant for non production purposes like lighting, security, domestic use of employees residing in the plant without for any payment.*

The Petition was heard for admission on 11th June 2003.

2. According to the Petition, M/s Ispat Profiles India Limited (IPL) have set up a plant at Sanaswadi, Taluka Shirur, District Pune, which is notified as a backward industrial area, for the manufacture of certain steel products. The plant was commissioned in 1998, and was a HT consumer of MSEB. For various reasons, the Petitioner has been incurring heavy losses since inception. IPL suspended operations at the plant and thereafter declared a lock out in November, 2000 which continues till today. IPL have approached the State Government and other authorities for waiver of certain past dues and for concessions in future dues.

3. The Petitioner states that MSEB temporarily discontinued power in November, 2000 and permanently in January, 2002. Outstanding arrears due to MSEB as on June, 2001 amount to around Rs.32 crores, which includes Rs.6.47 crores on account of minimum demand charges. IPL approached MSEB and a package was drawn up for liquidating these arrears, but their unit closed down, resulting in non-clearance of the dues. IPL claim that MSEB had also agreed to waive the minimum demand charges. However, because of the closure, IPL were not in a position to make the payment as per the revised schedule, and the waiver was withdrawn by MSEB. IPL contend that such withdrawal was not proper because MSEB were aware of the closure of the unit and their inability to pay the dues. It was also arbitrary and bad in law because no opportunity was given to IPL to explain their position.

4. IPL have submitted that they have accumulated losses of Rs.242 crores as on September, 2001 and are unable to restart the plant. However, they are trying to reach a settlement with labour, and are drawing up a revival package which could be successful only with the support of the State Government and its various agencies, including MSEB.

5. As far as MSEB are concerned, IPL seek waiver of past demand charges for the closure period, as well as interest and delayed payment charges from April 1997 onwards. They are also seeking approval from MSEB for liquidating their remaining arrears in sixty instalments within five years of the restart of operations, and have asked them not to levy minimum demand charges during that period. In view of the large investment required to restart operations, IPL would be unable to immediately start payments of past outstandings. Such relief is sought from MSEB also taking into account the fact that the manufacture of steel products is power intensive, and electricity contributes nearly 35% to its cost of production.

6. For the reasons set out above, IPL have also sought directions to MSEB not to levy Service Line Connection (SLC) and other charges for reconnecting the plant, particularly since they have already earlier paid SLC charges and established facilities for drawing power from MSEB. They also seek the supply of power at a rate close to the cost of supply at EHV and provide them bulk discount incentives in future bills.

7. IPL have admitted that there are different statutory and other agencies, including MSEB, that can be approached directly for seeking the above concessions, but the time taken by them to formulate a viable package for restructuring the dues and enabling restart of the plant is too long. The process of restarting the plant would be delayed if IPL were to pursue these agencies instead of the Commission. Under Regulation 74(h), the Commission has to keep in view the need for healthy growth of the industry while determining the tariff, and it is substantially under this provision that they are seeking the Commission's intervention with regard to their prayers.

8. In oral arguments, Counsel for IPL submitted that their Petition seeks to invoke the Commission's power to determine and review the tariff in respect of arrears payable and, alternatively, to arrive at a suitable payment schedule. With regard to the Commission's jurisdiction regarding the reliefs prayed for and the admissibility of the Petition, IPL Counsel drew attention to Sections 22(1)(a) and (d) read with Section 29 of the ERC Act, and the provisions of the MERC (Conduct of Business) Regulations. He submitted that, under Section 22(1)(a) the Commission has to, inter alia, determine the retail tariff of electricity. He emphasized the word "retail" to make a connection with the tariff for individual consumers such as the Petitioner. He also referred to Section 29(5), which provides that the State Government can provide subsidy "to any consumer" to indicate that the legal scheme allowed a dispensation in the case of an individual consumer with regard to tariff and other related matters affecting him.

Section 22(1)(d) mandates the promotion of “economy” in the activities of the electricity industry, and he sought to relate this to the prayers for a dispensation regarding arrears payable by IPL to MSEB. Counsel for IPL also referred to Section 29(2)(e), which requires that the interest of consumers be safeguarded and that they pay for the use of electricity in a reasonable manner, and sought to relate this provision to his prayer for granting a reasonable repayment schedule for arrears. Finally, Counsel drew attention to section 29(3), which allows the geographical position of any area to be taken into account while determining the tariff, and pointed out that the IPL unit is located in an area recognised by the State Government as industrially backward.

9. In response, MSEB have submitted, in their written reply and in oral arguments by Counsel, while opposing admission, that IPL are no longer their consumer since the power supply has been permanently disconnected and their agreement is no more in force. MSEB pointed out that IPL have suppressed the fact that their case is before the Board for Industrial and Financial Reconstruction (BIFR). That statutory authority is yet to conclude whether IPL can be rehabilitated and, if so, the reliefs that should be granted by various agencies. Until such time, it would not be appropriate to consider the reliefs prayed for. Moreover, no convincing or detailed justification has been provided for the various reliefs in arrears and future payments, and the manner in which they are related to the revival of the unit. IPL had approached MSEB for some of these reliefs in the year 2001 and, after due deliberation, MSEB had decided to permanently disconnect power supply with effect from the earlier date on which it was temporarily disconnected, thereby resulting in reduction in the arrears payable. MSEB also allowed IPL to pay the balance arrears in 12 monthly instalments. However, IPL did not pay even the first instalment under this dispensation, so the relief given in terms of demand charges was withdrawn. MSEB also submitted that, in view of the Orders of the High Court (Nagpur Bench) and the large arrears accumulated by IPL, any scheme for payment of the balance amount would require ratification by that Court upon an application by the Petitioner.

10. With regard to IPL’s reference to Regulation 74(h), which requires the Commission to keep in view, while determining the tariff, the need for the healthy growth of the industry, MSEB Counsel submitted that the healthy growth of an industry does not depend on the electricity tariff alone. By IPL’s own admission, they have been incurring losses right from inception and faced labour unrest, leading to closure of the unit, unrelated to the electricity tariff. MSEB have pointed out that all concerned, including IPL, were given the opportunity to be heard by the Commission in the process leading to the two tariff Orders issued so far, and the tariff was set in accordance with this process. Such opportunity would again become available to the Petitioner before the tariff is next revised, and that would be the appropriate occasion to make tariff related submissions concerning the Petitioner. In any case, MSEB submitted that Regulation 74(h) envisages a general policy of healthy growth of industries, and is not intended for invocation of jurisdiction for an individual consumer to approach the Commission exclusively for his personal gain.

11. With regard to IPL Counsel’s attempt to relate various words in Sections 22 and 29 to the prayers and the admissibility of the Petition, Counsel for MSEB submitted that the word “retail” is defined in Black’s Law Dictionary as “the sale of goods or commodities to ultimate consumers as opposed to sale for further distribution”. The use of the term in the legal provisions cited by IPL Counsel only means that the Commission can decide the retail tariff, but says nothing to support a separate tariff for each individual consumer. Section 22(1)(a) does not contemplate that a separate distinction can be made on the basis of the specific facts and circumstances connected with IPL. Section 29(3) deals with differentiation between classes of consumers, and enables the Commission to look at different segments of industry or society for differential tariff treatment. However, he submitted that this is not a tariff matter. Instalments were given to IPL, and they

defaulted on that also. As far as the reference to Section 29(2)(e) is concerned, it sets out one of the factors that the Commission must consider for tariff determination. However, we are not at that stage in these proceedings. He submitted that there is no case for admission and urged that the Petition be dismissed with costs.

12. By IPL's own admission there are various statutory authorities and other agencies which are concerned with the reliefs and concessions that IPL feel are necessary for enabling them to restart their operations, including BIFR and, more particularly in the case of most of the specific reliefs sought in the Petition, the MSEB. It will be clear from the prayers that what IPL are seeking are matters for commercial negotiations with MSEB (and within the purview entirely of the State Government with regard to electricity duty), and not with the Commission. The Commission's jurisdiction cannot be invoked merely on the grounds that the statutory and other authorities which are actually concerned may take time, or that MSEB are not willing to extend the reliefs applied for, when no such jurisdiction exists and recourse can be had to the fora of the Courts.. This is quite apart from the admitted fact that that some reliefs were granted by MSEB, but did not subsist on account of default by IPL for various reasons. As far as the attempt to stretch the ambit of the legal scheme in Sections 22 and 29 of the ERC Act and the Commission's Regulations, and the nexus sought to be established between various expressions used and the maintainability of their case, Counsel for MSEB's rebuttal reflects the evidently correct position. On tariff-related matters, as it happens, the process of determination of MSEB's tariff for 2003-04 has already begun separately, and on such matters IPL could use that opportunity to have their say. The Commission accordingly rejects admission of the Petition with these observations.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

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