

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

CASE No. 7 of 2003

In the matter of
Petition filed by (i) M/s Ispat Industries Ltd. and (ii) M/s Ispat Metallics (India) Ltd. in the matter of completion of the scheme of power supply by MSEB and related matters, including compensation and other reliefs.

Shri Jayant Deo, Member
Dr Pramod Deo, Member

ORDER

Dated: July 25, 2003

In their Petition filed on 25.2.2003, with Maharashtra State Electricity Board (MSEB) as Respondent, and citing Sec 22(1)(d), 22(2)(e), 22(2)(n) and 29(d), amongst others, of the Electricity Regulatory Commissions (ERC) Act, 1998, M/s Ispat Industries Ltd. and M/s Ispat Metallics (India) Ltd. have sought that MSEB be directed:

- (a) to submit the time schedule for speedy completion of the pending work on the scheme of power supply.*
- (b) to execute the scheme within the time schedule and fix penalties for default, if any.*
- (c) to ensure continuous power supply at 3300 MVA fault level with the voltage and frequency variation as specified in the legislation.*
- (d) to compensate the Applicants to the tune of Rs 160.10 Crs. due to power failure, etc.*
- (e) to proportionately charge the demand charges for the period of such power failures, interruptions, etc.*
- (f) to pay for the damages as and when the power supply and its quality is not as per the agreed terms.*

The Petition was heard for admission on 11.6.2003.

2. In their Petition, further written submissions and oral arguments through Counsel, the Petitioners have stated that they are MSEB's largest consumer of electricity, having undertaken a 3.0 MTPA integrated steel project plant at Dolvi (Tal. Pen, Dist. Raigad). Half of this capacity has been commissioned and the remaining phase is at an advanced stage of completion. The Petitioners have invested more than Rs 8,000 crores in setting up this state-of-the-art plant. Before doing so, they sought and received assurances from MSEB regarding both the quantum and quality of power to meet their special requirements. The plant requires

275 MW with a fault level of 3300 MVA, and constant power supply at rated voltage and frequency. A lower fault level, voltage and frequency de-rates the capacity of the plant, reduces output and increases the cost of production. To meet these requirements, MSEB agreed to supply the power and planned for an elaborate scheme involving setting up of 400 / 220 KV sub-stations and transmission lines under their letter dated 12.5.1993. The supply would be given at 220 KV and the Petitioners would have to make necessary arrangements for receiving and using it at that level. MSEB also sought from the Petitioners the cost involved for providing this facility, as well as a higher tariff and a long-term interest-free deposit. On their directions, the Petitioners also installed equipments to maintain the total harmonics generated at certain level and provide for static VAR system to avoid voltage flicker.

3. The Petitioners have submitted that their load was sanctioned by MSEB under letter dated 4.3.1998 after a series of meetings. At that time, MSEB stated that, with the arrangements then existing, a lower short circuit of 1900 MVA would be available, and that the desired level of 3300 MVA would be met after commissioning of a 400/220 KV Nagothane sub-station with Padge-Nagothane 400 KV DC line LILO on 220 KV Apta-Mahad circuit. Besides other conditions, MSEB stated that the supply would be governed by their conditions of supply and the provisions of the Indian Electricity Act and Rules. However, inspite of continuous follow up by the Petitioners, MSEB have not yet implemented the scheme envisaged to meet their power requirements.

4. According to the Petitioners, instead of that scheme, they are being supplied power through one double circuit line from the 220 KV IPCL sub-station, which gets power from Pedamba and Apta sub-station. This arrangements ensures a fault level of only 1900 MVA. Moreover, both sources being unreliable, the fault level drops to 600 MVA in case of failure on the Apta feeder. At such times, the plant has to restrict its load to 50 MW, which results in large financial loss and serious damage to the extensive electronic and other equipment. The sources of power from Apta and Pedamba and the sub-stations and transmission lines are in poor condition. There are frequent voltage dips, low frequency, break-downs and lower fault levels, which are seriously affecting the Petitioners.

5. The Petitioners have pointed out that Rules 54, 55 and 58 of the Indian Electricity Rules, 1956, which statutorily fix the variations in the declared voltage at the time of commencement of supply, the variation in voltage of EHV and in frequency have not been met by MSEB, adversely affecting them. They have been informing MSEB in each case of failure in power supply or voltage dip or other occurrences affecting the quality of power to them, along with estimates of loss that they have incurred on each occasion. This voluminous correspondence has been listed in Exhibit-D to the Petition. These occurrences also result in failure of the extensive sophisticated electronic equipments and cards which the Petitioners have installed at a large cost.

6. The Petitioners have submitted that that they had agreed to take power as per the present arrangement as an interim measure, since MSEB could not immediately establish the 400/220 KV Nagothane sub-station and connect the required number of 220 feeders and make the system suitable for drawal of 275 MVA of power at 3300 MVA fault level. The Petitioners had agreed to draw power from the IPCL sub-station as an interim measure, but

MSEB had assured them that continuous power would be supplied with mandated voltage and frequency variation as would be seen from the minutes of the meeting held between the parties on 9.10.1995 (Exhibit E).

7. The Petitioners have now undertaken Phase 2 of their integrated steel project to raise the capacity from 1.5 to 3 MTPA. According to them, the present system of power supply cannot cater to the additional load of this 2nd Phase and it is necessary that MSEB complete the 400 KV system and its linkages. Although MSEB have been providing the status of various activities, and the Petitioner are not making any allegations regarding their intentions, it is essential that MSEB give a time schedule for completion of the scheme originally envisaged, and for penalties to be imposed in case of lapse. The Petitioners have submitted that MSEB had indicated various alternatives for providing a direct link between Nagothane and Wadkhal sub-stations as far back as in 2001. However, no further progress has taken place.

8. The Petitioners have submitted that, in all the correspondence between 1993 and 1998, including the minutes of the meeting held on 31.5.1995, MSEB have always maintained that, in order to provide a fault level in excess of 3300 MVA, they would have to set up a 400 KV grid sub-station linking it with the 220 KV sub-station at the steel complex. The minutes acknowledge the kind of network that needs to be set up. MSEB had also conducted studies on the basis of the Petitioners future power requirements, and confirmed that voltage and frequency variation would be maintained within the limits prescribed under the Indian Electricity Rules. In the minutes, MSEB have also confirmed that the power supply would be available within two years. Both in 1995 and 1998, MSEB gave details of orders placed for executing the work of the sub-stations, procurement, etc. Notwithstanding this, they have not completed linking of the 220 KV Karavi sub-station with the 400 KV Nagothane sub-station. Between 1993 and 1998, estimates were provided for the amount payable by the Petitioners, which has mostly been paid keeping in view the extent of power supply. The special requirements of the Petitioners and the need to closely monitor the availability of quality and stable power supply to the project was acknowledged by MSEB setting up a task force. At the last task force meeting held on 4.9.2002, MSEB had explained that, in the existing situation, with non-availability of 400 KV sub-station, the fault level could not be achieved. There have been a number of other deficiencies such as lack of routine maintenance of transmission lines and sub-station equipment, inadequate personnel at the Wadkhal sub-station, etc.

9. It is submitted by the Petitioners that the various acts of omission and commission by MSEB with regard to power supply to their plant has resulted in a direct loss of Rs 160 crores, quite apart from losses due to low frequency. Therefore, they have urged the Commission to direct MSEB to compensate them with interest, and to make good their losses in future also.

10. The Petitioners have submitted that their agreement for supply of power clearly states that the statutory provisions shall apply, including the variation parameters regarding voltage and frequency. By not maintaining these, MSEB have breached the statute and the agreement. Moreover, with regard to the treatment of interruptions in supply in the agreement, MSEB have deviated from the model conditions of supply under Rule 27 to add

the break-down of plant and machinery as one of the circumstances in which they would be exempted from liability. Most of the failures are related to break down of plant and machinery of MSEB, which can be directly linked to poor maintenance and non-provision of interconnection from the 400 KV sub-station to the Petitioners' sub-station. Thus, the losses incurred by the Petitioners are directly related to acts which are in MSEB's control. As such, they are liable to pay for the resulting damages. The Petitioners have argued that such additional terms in the agreement constitutes 'unconscionability', a situation in which one party (the Petitioners) has to agree to such terms and conditions since he has no other meaningful choice even though they are unreasonably favourable to the other party (MSEB).

11. The Petitioners have pointed out that, apart from service line charges, MSEB have taken a refundable deposit and levied an additional 10 paise per unit for the plant's consumption. Correspondingly, the Petitioners are entitled to a proportionate reduction in the demand charges for the period in which power supply was disrupted or full power could not be provided as per the agreement.

12. Counsel for the Petitioner submitted that the Petition is maintainable under Section 22(1)(d) and 22(2)(e) of the ERC Act, which mandates the Commission "*to promote competition, efficiency and economy in the activities of the electricity industry*", and to regulate and promote the working of the utility in an efficient, economic and equitable manner. With regard to their various prayers, Counsel also cited the mandate of the Commission under Sections 28 and 29 and Regulations 76 and 74(h), which refer to the need for healthy growth of the industry and drawing up of incentives for better performance of utilities. He submitted that the question is not merely one of an agreement between two parties for undertaking a particular scheme, but also concerns the wider issue of MSEB's efficiency and the proper conduct of its business, failing which the Petitioners (who are also their largest consumers) have been seriously affected. The Petitioners have approached the Commission only after all efforts with MSEB for completion of the scheme that was envisaged to meet their special power requirements had failed, and after a series of meetings and voluminous correspondence.

13. Counsel submitted that the Petitioners are suffering from a continuous and long-standing lapse in efficient conduct on the part of MSEB. To an observation by the Commission, he contended that the matter was substantially not tariff related. In any event, they would be entitled to approach the Commission through a separate Petition even if they knew about the tariff revision proceedings and had, in fact, participated in them, in the circumstances of their case. He argued that since, under the Regulations, the Commission is entitled to go into such matters concerning the general working of MSEB even suo moto, then certainly on a particular set of circumstances being brought to its notice, particularly by a major industry and MSEB's largest consumer, the Commission must act upon it. If MSEB are not functioning in an efficient manner and there is a serious economic consequence on the Petitioners, the Commission has powers under the Act. He submitted that, although the Petition is not on behalf of a certain class of consumers, what the Commission would rectify would be of general application. The issues involved need to be dealt with by a specialized technical forum such as the Commission rather than a consumer court. In any case, the Commission would have to deal with such cases under the new Electricity Act. Nevertheless, Counsel submitted that, if necessary, the Petitioners could pursue the matter of

damages and compensation in some other forum, but the immediate issue of concern to them is regarding MSEB's inefficient functioning which is severely affecting the Petitioners and needs to be rectified by the Commission.

14. In their written reply opposing admission and in oral arguments through Counsel, MSEB have drawn attention to Condition No. 5 of their letter dated 12.5.1993, which made it clear that the execution of works may involve laying of lines in forest and private lands and would be subject to availability of right of way and/or permission from the concerned authorities. The cost of creating special facilities was required to be paid by the Petitioners, and it was stated that the work would be executed within 3 ½ years after full payment is made. In fact, right of way problems and litigation were encountered.

15. MSEB have stated that, in view of the changed scenario and the difficulties faced in the execution of related works, a fresh load sanction was offered by MSEB under its letter dated 4.3.1998, which made it clear that the short circuit level of 3300 MVA was not possible and that the plant would have to sustain with a lower short circuit level and without consideration of any contingency, with in-feed from Apta and Koyna together. It had also been indicated that, in case either in-feed is out for some reason, the short circuit level would be as low as 600 MVA. MSEB had stated that they would make efforts to release supply according to these arrangements in a phased manner, but that they would not be liable if it was not possible to do so in the planned time-frame for reasons beyond their control or for failure by the Petitioners. In fact, although some payment concessions were given by allowing instalments, there were certain failures on the part of the Petitioners also in complying with their obligations. MSEB have also outlined the status and the arrangements made for power supply to the Petitioners so far, set out the difficulties encountered in execution, and the alternatives that had been implemented or are proposed.

16. Counsel for MSEB submitted that the Petition concerns a scheme for power supply in which MSEB and the Petitioners had come to some understanding arising out of their basic transaction, and which cast certain obligations on both parties. While implying on the one hand that the scheme does not constitute an agreement, on the other hand the Petitioners are seeking a direction that the pending work be completed as per the scheme. The status, difficulties, alternatives and further course of action have been communicated to the Petitioners. The conditionalities of the scheme and the liabilities of MSEB in this regard were also well known to them, and have been summarized in the written reply opposing admission.

17. Counsel for MSEB submitted that being the largest consumer cannot put the Petitioners on a different footing from any other. Certainly, there has to be efficient working in accordance with the objectives of the ERC Act, but the practical realities and constraints have to be taken into account, including the reference made by the Commission to various measures in its tariff Orders to promote better working, and the fact that MSEB is not independent of what was happening in other parts of the western grid. The scheme has not fully come into being, not because of any lapses on the part of MSEB, but for other reasons. He submitted that the reliefs contemplated in terms of compensation and other matters are within the purview of the Civil Court, which would be the appropriate forum where all the correspondence and documents can be examined to assess the facts. He reiterated that the

Petitioners are essentially contending that there has been a breach of obligations. On the other hand, they are claiming that there is no contract, in which case there cannot be a breach or damages. In effect, the Petitioners are trying to invoke the jurisdiction of the Commission in a matter which is wholly contractual and within the purview of the Civil Courts.

18. From the written and oral arguments on behalf of both parties which have been summarized above, it is clear that the matter relates to the implementation of an agreed scheme that was envisaged to meet the special power requirements of the Petitioners, containing certain conditions and caveats. In addition to the responsibility and liabilities arising out of non implementation of the scheme for various reasons, and the plea for its enforcement and other reliefs, the Petitioners have also referred to breaches not only of the wider scheme, but also the statutory technical requirements under the Indian Electricity Rules, and conditions of supply enshrined in the agreement which are unfavourable to them inasmuch as they purport to divest MSEB from liability in case of their own break-downs. Clearly, this is a matter which relates to a contract of some kind between the parties and which must, therefore, be resolved under the provisions of the Indian Contract Act in the competent Court rather than before the Commission. To claim that the scale on which the breach of obligations or non-performance has affected the Petitioners justifies invoking its wider mandate under Sections 22(1)(d) and 22(2)(e) (Regulations 74(h) and 76 having a bearing on the principles for the determination of tariff) would be to ascribe to the Commission the powers to adjudicate under the Indian Contract Act, which rests solely with the Courts. Moreover, there may also be certain ingredients of the Petition which relate to deficiency in service that might attract the provisions of the Consumer Protection Act, to which specific reference has been made under Section 49 of the ERC Act, and which also covers the supply of electricity as a service. To the extent that certain tariff-related reliefs, such as reduction in demand charges when there is failure in supply, are not presently provided for, it is open for the Petitioners to agitate the matter for the future in the course of the separate tariff revision proceedings that have been initiated on a separate Petition by MSEB. Thus, while not questioning the gravity of the impact of inadequate power supply, for whatever reasons, in the case of the Petitioners, the Commission rejects its admission with these observations.

Sd/-

(Jayant Deo)
Member

Sd/-

(Dr Pramod Deo)
Member

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