

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

CASE No. 1 of 2001

In the matter of joint Review Petition of M/s Ispat Industries Limited and M/s Ispat Metallics (India) Ltd for Review of Interim Order dated 9.1.2003 in the matter of Determination of Tariff [2001-2002] Applicable to various categories of consumers of Maharashtra State Electricity Board, and Levying of T&D Loss Charge on the basis of Differential (Circle/Zone) T&D Losses Evaluation.

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

ORDER

Dated: **May 14, 2003**

M/s Ispat Industries Limited jointly with M/s Ispat Metallics (India) Limited, have filed a Petition dated 10th March 2003 seeking review of the Commission's Order dated 9.1.2003, and praying for (a) *review of the T&D loss levy for the period 1st Jan-02 till 31st Dec-02 for the Pen Circle, and (b) refund of the T&D loss charge levied on the Applicants since Jan-2002 till 31st Dec 2002, along with interest.* The Review Petition also seeks that, pending its hearing and final disposal, ad-interim relief in terms of prayers above be granted. The Review Petition was heard for admission on 29th April, 2003.

2. The Review Petitioners are, in effect, seeking that the interim Order be applied with retrospective effect from January, 2002, when the principal Order was delivered and following which T&D loss (TDL) in the Circle in which they are located has been below the benchmark level. In their oral submissions during the hearing, they have pleaded that, in the alternative, the Order be made applicable at least from October, 2002 which was the date originally envisaged in the principal Order for applying Circle/Zone wise T&D loss charges.

3. In their affidavit for review, the Petitioners have argued that the Commission's Order dated 10.1.2002 recognises that the TDL charge is a temporary one, while mandating T&D loss at 26.87% by the end of the financial year 2000-01, and that the interim Order requires review since they are extra high voltage consumers for whom there is no scope for pilferage.

4. In oral arguments at the time of hearing, Counsel also submitted that, as against the amount of recovery of T&D loss charges of Rs. 635 crores estimated by the Maharashtra State Electricity Board (MSEB) originally, collection has been of the order of Rs. 708 crores. Therefore, the loss of Rs. 90 crore estimated by MSEB for the balance 3 months of the year would in fact aggregate to only Rs. 18 crores based on their own figures, taking into account the stated recovery of Rs. 59 crores per month. T&D losses going down means more units are delivered, and obviously more revenue is collected. He submitted that the relief provided by the Commission in its Order-dated 9.1.2003 should in fact be extended from October 2002 keeping in view the Commission's Order of January 2002.

5. On a query from the Commission, MSEB Counsel submitted that, till the 2003 Order, the provisions of the Order of 2002 would remain in force and, therefore, giving retrospective effect to the 2003 Order would not be tenable.

6. The ambit of review by the Commission itself (keeping in view the separate provisions for appeal to the High Court under Section 27 of the Electricity Regulatory Commissions Act) is constrained by Regulation 87(1) of the MERC (Conduct of Business) Regulations, which reads as follows:

“Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision/ order was passed by the Commission or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within 60 days of the date of decision/ order, to the Commission”.

However, neither the Petition nor oral submissions at the time of hearing clearly indicate how review is admissible in terms of the parameters laid down under Regulation 87. Moreover, the Commission in its Interim Order has specifically noted the pleas of various stakeholders that differential T&D Loss charges be implemented from October 2002. The Order also mentions the circumstances under which it could be finalised only in January 2003, and bearing in mind issues related to retrospective application. The Review Petition does not, therefore, meet the test of Regulation 87, and is accordingly dismissed as inadmissible.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC.

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