

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 83 of 2006**

**In the matter of**  
**Petition of M/s Girija Steels Pvt. Ltd., seeking clarifications from the Order dated**  
**October 20, 2006 passed in Case No. 54 of 2005**

**Dr Pramod Deo, Chairman**  
**Shri A. Velayutham, Member**  
**Shri S. B. Kulkarni, Member**

**ORDER**

**Dated: 26<sup>th</sup> June, 2007**

M/s. Girija Steels Pvt. Ltd (“GSPL”) filed a Petition on March 15, 2007, seeking certain clarifications arising from the Order dated October 20, 2006 passed in Case No. 54 of 2005 (in the matter of approval of MSEDCL’s Annual Revenue Requirement for FY 2004-05, FY 2005-06 & FY 2006-07, and determination of tariff for FY 2006-07). MSEDCL (through its Managing Director) and the Superintending Engineer-MSEDCL, Aurangabad Rural Circle, have been impleaded as proforma Respondent Nos. 1 and 2, respectively. GSPL submitted that it has a contract demand of 3780 kVA with MSEDCL. GSPL is engaged in the manufacturing of mild steel ingots. The sanctioned load of GSPL was 3500 kW and the supply to their factory premises situated at Gut No. 850, 24 km stone, Paithan Road, Village Bidkin, Taluka Paithan, District-Aurangabad is provided by MSEDCL through express feeder at 33kV. GSPL have submitted that the current occupier of the said factory premises is M/s. J. Square Steels Pvt. Ltd. (“JSSPL”) which have been joined as a Co-Petitioner.

2. It has been submitted that JSSPL have been availing power supply from the month of June 2006 and have been making payments towards energy bills raised by MSEDCL from the said month. It has been clarified by GSPL that GSPL has applied for changing the electricity connection in the name of JSSPL, which is currently pending before MSEDCL. The energy bills raised by MSEDCL since October 2006 have been paid under protest, the reason being the grievance of GSPL pertaining to the levy of ‘Additional Supply Charge’ (“ASC”) in terms of the Order dated October 20, 2006. On an enquiry made by GSPL, an assurance was provided by MSEDCL that MSEDCL have filed a separate Petition before the Commission (Case No. 59 of 2006) seeking review of the said Order dated October 20, 2006. Therefore, it was assured by MSEDCL that the



bills issued from October 2006, so far as they relate to payment of ASC, shall be modified as per the final order to be passed in Case No. 59 of 2006. GSPL submitted that the manufacturing activity in the aforesaid factory premises of JSSPL was not in full swing from June 2006 to December 2006. During this period, though supply was released by MSEDCL to the extent of the contract demand of JSSPL, the entire energy that was available was not utilised by JSSPL. GSPL have submitted that the same can be verified through meter readings from the hi-tech meters installed by MSEDCL, where the reading of every electrical parameter per second can be taken.

3. It is the contention of GSPL that, despite JSSPL being connected through express feeder for availing supply of power round-the-clock (“RTC”), there was no mandate or contractual obligation on JSSPL to consume power on RTC basis. JSSPL was only contractually obligated to bear minimum demand charges even if power was not consumed at the aforesaid factory premises. GSPL have contended that the Orders dated September 29, 2006 and October 20, 2006 passed in Case No. 54 of 2005 have been wrongly interpreted by MSEDCL so far as the levy of ASC is concerned. The said orders, as contended by GSPL, do not direct levy of ASC on consumers who have not consumed energy beyond certain hours. Vide the said orders, ASC is to be levied on HT industrial consumers who consume energy beyond certain hours without observing any load shedding for a minimum 7.25 hours. MSEDCL have interpreted the said orders as per their convenience and have levied ASC on JSSPL which have voluntarily observed daily load shedding to the extent of 4 hours during October 2006 to January 2007 (from 18.00 hrs - 22.00 hrs) and 7 hours from February 2007 (from 09.00 hrs - 12.00 hrs and from 18.00 hrs - 22.00 hrs). It is further the contention of GSPL that as JSSPL have observed voluntary load shedding during peak hours, ASC, which is charged for procurement of costly power to meet peak demand, in terms of the Order dated October 20, 2006, should not be levied on JSSPL. GSPL have contended that the Order dated October 20, 2006 has required the levy of ASC on consumers, which seek to enjoy/ benefit from reduced load shedding hours (i.e., any duration of load shedding less than 7.25 hours per day). The said order has given due consideration to the principles enunciated under the National Tariff Policy. The implementation of ASC on HT-1 consumers connected through express feeders is provided in the table under paragraph 4 of Chapter 8 of the Order dated October 20, 2006. Under the said table, the following has been provided:

*“Note 1: The table provides the costly power allocation ratios only for regions based on the average load shedding hours applicable for different regions and groupings (See Annexure VI for details). MSEDCL should levy Additional Supply Charge based on the actual division wise load shedding hours instead of average load shedding hours.”*

4. With the present Petition, GSPL have submitted their letter to MSEDCL dated February 8, 2007, vide which letter the Respondent No. 2 was requested to (i) revise the energy bills issued from October 2006 to January 2007 by charging ASC only at 14% (owing to JSSPL not consuming electricity from 18.00 hrs - 22.00 hrs daily); (ii) prepare



the energy bill pertaining to February 2007 considering that voluntary load shedding have been observed for 4 hrs on February 1, 2007 and 7 hours (from 09.00 hrs - 12.00 hrs and from 18.00 hrs - 22.00 hrs) from February 2, 2007; (iii) accept the proposal of JSSPL to observe daily voluntary load shedding from 09.00 hrs - 12.00 hrs and from 18.00 hrs - 22.00 hrs for the ensuing months. Despite the said request, MSEDCL has charged ASC at 42% in the energy bill for February 2007. Thereafter, GSPL filed Writ Petition No. 1278 of 2007 [M/s. Girija Steels Pvt. Ltd & Anr. Vs. MSEDCL] before the High Court of Judicature at Bombay (Aurangabad Bench) seeking, *inter alia*, the following clarifications:

- (i) Whether the industries which voluntarily observe load shedding for a period of 7.25 hours are liable to pay for costly energy purchased by MSEDCL for avoiding load shedding?
- (ii) Whether industries are bound to consume energy for 24 hours and/or not entitled to observe load shedding to avoid levy of ASC?

5. Vide order dated March 6, 2007, the Hon'ble Bombay High Court had directed that GSPL may initiate appropriate proceedings before the Commission on the aforesaid clarifications, provided that a cheque dated March 30, 2007, bearing an amount of Rs. 15,50,000/- (an outstanding amount pertaining to ASC) is handed over to MSEDCL by 17.00 hrs on the same day, as undertaken by Shri. V.M. Thorat, advocate for GSPL. Further, the Hon'ble Bombay High Court directed that MSEDCL may encash the said cheque on March 30, 2007, should GSPL fail to initiate appropriate proceedings before the Commission by March 30, 2007. Pursuant to the said order of the Hon'ble Bombay High Court, GSPL have filed the present Petition contending that ASC should be charged on JSSPL as per their specific consumption of energy, in terms of the note cited as above which appears below the table under paragraph 4 of Chapter 8 in the Order dated October 20, 2006. The load shedding hours applicable to JSSPL have not been declared by MSEDCL. Moreover, since supply is being provided through express feeder, JSPPL is in a position to observe voluntary load shedding. Based on the said aspects, GSPL have sought the following clarifications under the present Petition:

- (i) whether under the Order dated October 20, 2006 in Case No. 54 of 2005, it is compulsory for HT consumers connected through express feeders to run their industrial activity on RTC basis and avail uninterrupted supply?
- (ii) whether a HT consumer connected through express feeder has the right to adopt voluntary load shedding during peak hours when the load shedding hours for such HT consumer is not declared by the distribution licensee?
- (iii) whether a HT consumer connected through express feeder can be charged for supply of costly energy during peak hours though they had adopted voluntary load shedding during such peak hours?



6. The prayers made by GSPL in its Petition are as under:

- “(a) the order dated 20<sup>th</sup> October 2006 passed in Case No. 54 of 2005 be clarified on following points;*
- (b) Whether the HT consumer on Express Feeder has a right to adopt for voluntary load shedding in peak hours as the load shedding on such HT consumer is not declared by the Respondent-Distribution Company;*
- (c) Whether the HT consumer on Express Feeder can be charged for supply of costly energy in peak hours though they had adopted voluntary load shedding;*
- (d) Pending the hearing and final disposal of this Writ Petition, the bill of February 2007 be stayed to the extent of Rs. 15,50,000/-;*
- (e) Any other consequential clarification as may be deemed fit by the MERC.”*

7. Citing the provisions of Regulation 3.3.4 and Regulation 6 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, GSPL have further contended that fixed charge is payable over and above energy charges for actual energy supply, and a consumer is required to pay for the supply of electricity based on prevailing retail tariff. GSPL have further contended that under its Order dated February 20, 2006 in Case No. 78 of 2006, it has been observed by the Commission that MSEDCL have been collecting amounts towards purchase of costly energy more than what has been actually incurred. While industries should be encouraged to observe voluntary load shedding, the anomaly in levying ASC on JSSPL, while they observed voluntary load shedding, has unlawfully benefited MSEDCL. GSPL have contended that levy of ASC at 42% on industries that observe voluntary load shedding during peak hours, secure the collection of an amount that equals to four (4) times of the actual amount borne towards purchase of costly energy.

8. GSPL have separately prayed for the stay of the energy bill issued by MSEDCL to JSSPL for the month of February 2007 to the extent of Rs. 15,50,000/-.

9. At the hearing held in the matter on April 17, 2007, Shri. Vijay M. Thorat, Counsel, appeared on behalf GSPL. Smt. Deepa Chawan, Counsel, appeared for MSEDCL. Shri. Thorat submitted that owing to GSPL observing voluntary load shedding for 7.25 hours during peak hours, about 4 MW of energy is saved per day. Smt. Deepa Chawan submitted that GSPL is essentially not seeking clarifications from the Order dated October 20, 2006. The present Petition is aimed towards adjudication of disputes relating to the payment of ASC, imposition of which has been mandated under the said Order. Smt. Chawan submitted that the said Order provides for sufficient incentives to industrial consumers for minimising their energy consumption. The contention of GSPL that they are observing voluntary load shedding is incorrect as, in reality, they are actually shifting their load from one time-zone to another time-zone. The Commission should consider that the Order dated October 20, 2006 is a general order and the imposition of ASC, as per the said Order, cannot vary from consumer to consumer. The



Commission should further consider that the concept of peak demand and off-peak demand is no longer subsisting, so far as the demand-supply situation in Maharashtra is concerned. Power crisis in Maharashtra is presently occurring throughout the day.

10. Smt. Chawan submitted that vide order dated March 29, 2007 in Civil Application No. 2427 of 2007 in Writ Petition No. 1278 of 2007, the Hon'ble Bombay High Court (Aurangabad Bench) has held that the Commission shall be the sole authority to decide on issues pertaining to GSPL's payment of ASC. Further, vide the said order, a final opportunity has been provided to GSPL to deposit a cheque dated April 4, 2007 for an amount of Rs. 15,50,000/- in favour of MSEDCL. MSEDCL may encash the said cheque on April 18, 2007, should GSPL fail to initiate appropriate proceedings before the Commission by April 18, 2007. The Commission should further consider that several proceedings are pending against GSPL before various fora with regard to non-payment of energy bills. Per contra, Shri. Thorat submitted that as per the National Tariff Policy, MSEDCL should be restrained from charging ASC on GSPL when GSPL is not willing to draw costly power during the peak hours. ASC should be charged on consumers who are willing to be supplied with costly power or avail supply during the peak hours.

11. On the direction issued by the Hon'ble Bombay High Court in the cited order dated March 29, 2007, the Commission enquired whether GSPL would be agreeable to bear delayed payment charges on the ASC for the month pertaining to February 2007 together with interest, should the outcome of the clarifications as sought for require JSSPL to ultimately pay the amounts levied by MSEDCL towards ASC. Shri. Thorat undertook on behalf of GSPL that should the Commission arrive at such a finding/conclusion, GSPL would be agreeable to bear the required delayed payment charges together with interest, on the amount of ASC.

12. On April 18, 2007, the Commission passed an interim Order in the present matter, under the powers vested in it vide Section 94(2) of the Electricity Act, 2003. Vide this interim Order, it was provided as under:

*“3. GSPL have prayed that pending the hearing and final disposal of the present Petition, the bill pertaining to February, 2007 amounting to Rs 15,50,000/- be stayed by this Commission by way of issuance of an interim Order under Section 94(2) of the Electricity Act, 2003. Counsel for GSPL and Counsel for MSEDCL both agreed that in the event, as an outcome of the final disposal of this matter as and by way of clarification as sought for, GSPL are deemed not to be liable to pay the Additional Supply Charge (ASC), GSPL shall be entitled for adjustment of the said charges for which the cheque has been deposited, in future bills. Similarly, in the event, as an outcome of the final disposal of the matter by way of clarification, MSEDCL is entitled to the ASC pertaining to February 2007 as claimed for, from GSPL, GSPL shall be liable to pay the delayed payment charge with interest as applicable under law on the principal amount of ASC recoverable as arrears by MSEDCL. MSEDCL will not encash the cheque for an amount of Rs*



*15,50,000/- deposited earlier by GSPL with MSEDCL in terms of the orders dated March 6, 2007 and March 29, 2007 passed by the Hon'ble High Court of Judicature of Bombay, Aurangabad Bench, till the final disposal of this matter.”*

13. From the various averments made and arguments advanced, it is clear that the Petitioners seek certain specific clarifications from the Commission's Order dated October 20, 2006 passed in Case No. 54 of 2005 on the aspect of levy of ASC. No dispute *qua* GSPL/JSSPL and MSEDCL has been referred for adjudication by the Commission. The contentions raised by MSEDCL in this regard cannot be sustained. Before issuing the clarifications to the specific queries submitted in the Petition, it needs to be taken into account that levy of ASC is essentially linked to the total consumption rather than the consumption during specified hours of the day. However, neither the Petitioner nor MSEDCL have given any details of the actual total consumption of JSSPL for the period in question vis-à-vis the benchmark consumption specified by the Commission in the Order under reference and relevant clarifications issued by the Commission vide Orders dated 13<sup>th</sup> January 2006, 21<sup>st</sup> February 2006, 26<sup>th</sup> February 2007, and 4<sup>th</sup> May 2007 issued in Case No. 54 of 2005. Counsel for MSEDCL submitted that the Petitioner has shifted the consumption from one time zone to another, though no supporting data has been submitted in support of this statement. The submission made by MSEDCL that the imposition of ASC cannot vary from consumer to consumer, is contradictory to the provisions of Order dated October 20, 2006 and relevant clarificatory Orders as aforesaid, as the same clearly provide for the levy of ASC in proportion to the total consumption of power vis-à-vis the benchmark consumption. This is further explained in the subsequent paragraphs as under.

14. The Commission hereby issues the following clarifications to the specific queries raised by GSPL:

- (a) The Petitioner has sought a clarification as to whether under the Order dated October 20, 2006 in Case No. 54 of 2005, it is compulsory for HT consumers connected through express feeders to run their industrial activity on RTC basis and avail uninterrupted supply.

It is clarified that it is not compulsory for HT consumers connected through express feeders to run their industrial activity on round the clock (RTC) basis and avail uninterrupted supply;

- (b) Next, a clarification has been sought as to whether a HT consumer connected through express feeder has the right to adopt voluntary load shedding during peak hours when the load shedding hours for such HT consumer is not declared by the distribution licensee.



It is hereby clarified that a HT consumer connected through express feeder has the right to adopt voluntary load shedding during peak hours when the load shedding hours for such HT consumer is not declared by the distribution licensee. It is further clarified that voluntary load shedding, i.e., withdrawal of consumption from the grid, can be undertaken –

- i) by any consumer, irrespective of HT or LT level supply;
  - ii) irrespective of whether the consumer is connected through express feeder or mixed feeder;
  - iii) during any hour of the day, irrespective of whether it is peak or off-peak hour; and
  - iv) irrespective of whether the load shedding hours has been declared by the distribution licensee for such consumer, or not.
- (c) Petitioners have also desired to know as to whether a HT consumer connected through express feeder can be charged for supply of costly energy during peak hours though they had adopted voluntary load shedding during such peak hours.

It is clarified that as the levy of Additional Supply Charges (ASC) is linked to the total consumption of power vis-à-vis the benchmark consumption, rather than the consumption during peak hours, it is possible that ASC would be leviable even though the HT consumer connected through express feeder has voluntarily adopted load shedding during peak hours. The quantum of consumption on which ASC is to be levied would differ from one consumer to another, depending on their total consumption in the current billing month vis-à-vis their benchmark consumption in the reference billing period.

15. Though clarifications to the specific queries raised by the Petitioner in their Petition have been given as above, the Commission is of the view that it would be justifiable in public interest to further clarify on the quantum of consumption on which ASC is to be levied, which is explained with the help of the following illustration and which is based on the case under reference. However, before delving on the illustration, certain provisions of the Order dated October 20, 2006 that are relevant to the issues in hand, are to be taken into account, which read as under:

*“The Commission is of the opinion that consumers should be incentivised to respond to the Additional Supply Charge. Therefore, the Commission directs MSEDCL to assess the consumption of the consumer as against the monthly average of previous years’ consumption (January 2005 to December 2005) while billing the consumer for additional supply charge. For instance, if a commercial consumer located in industrial and urban agglomeration reduces the consumption by 5% as against the average of previous years’ consumption, then only 14% (19% - 5%) of his current consumption should be billed at Additional Supply Charge.*



*This shall not only incentivise the consumers to conserve energy and eventually procurement by MSEDCL from costly sources but also reduces the tariff impact on the bills of consumers. For computation of previous years' average, the clarifications issued by the Commission through its Clarificatory Orders dated January 13, 2006 and February 21, 2006, in Case No. 35 of 2005 shall apply....”*

Applying the above stipulation to the present case of JSPPL, the reference period for determination of benchmark consumption in Units for billing of ASC in the month of October 2006 would be the energy billed to JSSPL in the billing month of September 2006. The same reference billing period and benchmark consumption would be applicable for levy of ASC in the months of November 2006 to April 2007. For the purposes of an illustration only, it is assumed that the total energy billed to JSSPL in the month of September 2006 was 1,00,000 units (kWh). If no comparison is undertaken with the benchmark consumption level, then the ASC will be levied on 42% of the total energy consumption in the respective month, i.e., October 2006, November 2006, etc. For ease of understanding, and for illustration purposes only, different scenarios of total energy consumption in the month of October 2006 and the proportion of units on which ASC will be levied, after comparison with the benchmark consumption are given in the following table:

Sl.	Energy Consumption in October 2006 (kWh)	Reduction in consumption vis-à-vis benchmark consumption	Proportion of Units on which ASC is to be levied	Units on which ASC will be levied (kWh)
1	1,00,000	0%	42%	42,000
2	90,000	10%	32%	28800
3	80,000	20%	22%	17600
4	1,10,000	-10%	42%	46200

Note: The above computations are only for illustration purposes, and the values and percentages given above are not to be used directly for billing purposes

16. The Order dated October 20, 2006 in Case 54 of 2005 is valid till March 31, 2007 and as mentioned therein, shall be deemed to be effective prospectively from the month of October, 2006, for all billing purposes. Thereafter, pursuant to an Order dated April 23, 2007 in Case No. 2 of 2007, the Order dated October 20, 2006 was *inter alia* extended till the revised tariffs are determined for FY 2007-08 under the MYT framework and orders issued thereunder. As subsequently, a Tariff Order dated May 18, 2007 was issued in Case No. 65 of 2006, which is made effective from May 1, 2007, the clarifications given in this Order shall be applicable for billing during the period from October 1, 2006 to April 30, 2007. For the period starting May 1, 2007, the revised proportion of ASC and ASC rate, and the incentive/ disincentive mechanism as elaborated in the Commission's Order dated May 18, 2007 in Case 65 of 2006, will be applicable, with respect to the benchmark consumption levels specified in the said Order.



With the above clarifications, the Petition of M/s. Girija Steels Pvt. Ltd and M/s. J. Square Steels Pvt. Ltd., as co-petitioner, stands disposed of.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr. Pramod Deo)  
Chairman



Secretary, MERC