

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 92 of 2009

In the matter of
Petition filed by M/s. Ispat Industries Limited seeking Clarification of Tariff Order
dated 18.05.2007 and Clarification thereto issued by MERC, in view
of Order dated 13.11.2009 passed by the Appellate Tribunal for Electricity

Shri. V.P. Raja, Chairman
Shri. S. B. Kulkarni, Member
Shri. V. L. Sonavane, Member

M/s. Ispat Industries Ltd.	...Petitioner
V/s	
Maharashtra State Electricity Distribution Company Limited (MSEDCL)	...Respondent

ORDER

Dated: August 03, 2010

M/s. Ispat Industries Limited (Ispat) submitted a Petition under affidavit on December 24, 2009, under Section 92 of the Electricity Act, 2003 (EA 2003), inter-alia seeking clarification on the benchmark consumption for charging of Additional Supply Charge (ASC)



units in case of consumers whose Sanctioned Load/Contract Demand had been duly increased after the billing month of December 2005.

2. The prayers made by Ispat in its Petition are as under:

- “
- i) *clarify that the order dated 12th May, 2008 in Appeal No. 135 of 2007 (Annexure – 2 hereto) passed by APTEL is applicable to the Appellant (Eurotex) in that Appeal and is not applicable to the Petitioners;*
 - ii) *quash the demand of Rs. 14.38 crores raised by Respondents in the bill dated 15.09.2009 (Annexure – 9 hereto);*
 - iii) *that pending disposal of this petition, stay the demand of Rs. 14.38 crores raised by the Respondents by the bill dated 15.09.2009 (Annexure – 9 hereto);and*
 - iv) *Pass such other orders or directions and clarifications as this Hon'ble Commission may deem fit and proper in the interest of justice.”*

3. Ispat submitted as under, in its Petition:

- a. The Petitioner has approached the Commission pursuant to and in view of Order passed by the Appellate Tribunal for Electricity (ATE) dated November 13, 2009 on the Petitioners' I.A. No. 319 of 2009 filed in Appeal No.135 of 2007, whereby the ATE stated that it was appropriate that the Petitioners approach this Commission for relief as it was a matter to be considered by this Commission.
- b. The Petitioner is a Company incorporated under the Companies Act, 1956, and is a consumer of MSEDCL. The Petitioner is a steel major in the Country and is one of the largest consumers of the electricity supplied by the Respondent (MSEDCL), drawing power at Extra High Voltage (EHV), i.e., 220 kV. The Petitioner has its steel factory at Dolvi, District Raigad, which falls within Pen Circle, and the annual energy bill of the Petitioner is about Rs.800 Crore with the present level of consumption. In case demand is increased, the annual energy bill of the Petitioner will be around or in excess of Rs.1,000 Crore, which is about 5% of the Respondent's revenue. The cost of power is a major determinant of the pricing of the final product of the Petitioner, and contributes 17% of the raw material cost.
- c. The facts under which the Petitioner has filed the Petition are as follows:
 - i) In the Commission's Tariff Order dated May 18, 2007 in Case No. 65 of 2006 for FY 2007-08, the Commission, inter alia provided for the calculation of Additional Supply Charge (ASC) units based on reference period consumption as set out in



para 7.4 (g) the said Tariff Order, and the revised tariffs came into effect from June 1, 2007.

d. The Commission issued three Clarificatory Orders subsequent to the Tariff Order dated May 18, 2007, which are as under:

- i) On a Petition filed by MSEDCL, the Commission passed a Clarificatory Order dated August 24, 2007 in Case No. 26 of 2007 and Case No. 65 of 2006 in respect of the various issues, including the reference consumption to be considered for levy of ASC.
- ii) The Commission passed a further Clarificatory Order dated September 11, 2007 on a Petition filed by MSEDCL as well as representations received from Consumer Representatives and several consumers in the context of levy of ASC and the benchmark consumption for the same. The Commission, in its Order dated September 11, 2007, directed inter alia that:

“ 1. Reference consumption to be considered for levy of ASC

(a) Cases of increase in Contract Demand/Sanctioned Load

In the context of the reference period in case of consumers where the Contract Demand has been increased subsequent to the billing month of December 2005, the Commission had clarified on pages 25 and 26 of the Clarificatory Order under the heading “Reference bill period for HT foundries in cases of increase in Contract demand” as under:

*“In case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/Contract Demand or the billing period of the month in which **the third occasion of the consumer utilising at least 75% of the increased sanctioned load/Contract Demand after increasing the Contract demand is recorded, whichever is earlier.**”*

The Commission had also clarified on pages 14 and 15 of the Clarificatory Order that,

“clause (g) of the Order reproduced above, will be applicable only in cases, where the increase in Contract Demand is equivalent to 25% or more of the Contract Demand during the reference period from January 2005 to December 2005”



In continuation, the Commission clarifies as under:

a. The above clarifications on pages 14, 15, 25 and 26 of the Clarificatory Order dated August 24, 2007 are to be read in conjunction, and not independently.

b. Though the heading under which the clarification has been given may appear to indicate that the clarification is applicable only for HT Foundries, the detailed clarification makes it clear that it is applicable for all consumers where the Contract Demand/sanctioned load has been increased.”

- iii) The additional clarifications were required to address specific cases, which were not addressed in earlier Clarificatory Orders. Accordingly, a further Clarificatory Order dated December 17, 2007 was passed by the Commission, which also came into effect from May 1, 2007. By the said Clarificatory Order, the Commission clarified that the clarifications contained in the Order dated September 11, 2007 were not restricted only to HT Foundries but were also applicable for determination of reference period in cases of all the HT consumers where the Contract Demand had been increased. It also clarified that in case of increase in Contract Demand by 25% or more with respect to the original Contract Demand, the applicability of the clarifications under Orders dated August 24, 2007; September 11, 2007 and December 17, 2007 will be applicable prospectively only from the month in which the increase in Contract Demand of atleast 25% with respect to the original Contract Demand is affected.
- e. After issuance of Tariff Order dated May 18, 2007, the Commission in its Clarificatory Orders dated August 14, 2007, September 11, 2007, and December 17, 2007, stipulated the criteria to decide reference period for consumption level for consumers who have increased their Sanctioned Load/Contract Demand, as set out in Clause 7.4(g) of the Order and reproduced below:
- (i) Billing period after six months of the increase in the Sanctioned Load/ Contract Demand, or,
 - (ii) Billing period of the month in which the third occasion of the consumer utilising at least 75% of the increased Sanctioned Load/Contract Demand, whichever is earlier, shall be the reference period for calculation of benchmark units for the determination of ASC. The Petitioners submitted that reference benchmark as formulated by the Commission encouraged lower consumption after enhancement of sanctioned load/contract demand, in comparison to reference period.



- f. The Petitioner submitted that its Sanctioned Load/Contract Demand has increased from 205 MVA to 300.77 MVA in April 2006. The reference consumption for the Petitioner was determined in accordance with the said Order dated May 18, 2007 as clarified by the Orders dated August 24, 2007, September 11, 2007, and December 17, 2007 was reckoned as June 2006 consumption (which was the third occasion of consumer utilising at least 75% of the increased Contract Demand, as per the said Order). Accordingly, the Respondent had raised a bill dated May 30, 2006, which has been paid by the Petitioner.
- g. From the ATE Judgment on the Appeal filed by M/s. Eurotex Industries Limited (EIL), another consumer of MSEDCL, it is learnt that EIL had achieved 75% of its increased Sanctioned Load/Contract Demand within six months from the date of the said increase of load. However, while achieving 75% of the increased Sanctioned Load, the units consumed by EIL were on the lower side in comparison to what it had achieved after 6 months from the date of increase in the Sanctioned Load. EIL did not approach the Commission either during the public process or subsequent Clarificatory Orders. However, it appears that when the bill for ASC was submitted by the Respondent to EIL, EIL filed a Petition (Case No. 28 of 2007) before the Commission and the same was rejected by the Commission by its Order dated September 19, 2007. Thereafter, EIL filed an Appeal before ATE (Appeal No.135 of 2007) challenging the Order dated September 19, 2007 passed by the Commission. The said Appeal related to Clause 7.4(g) of the Tariff Order dated May 18, 2007 (which came into effect from June 1, 2007) and the method of fixation of benchmark for calculation of ASC for the HT consumers who had increased their Sanctioned Load after December 2005. EIL in its aforesaid Appeal stated inter alia as under:

“(iv). The Impugned Order, under clause 7.4(g) thereof, has stipulated that for fixing the benchmark Units to calculate the additional supply charge (ASC) in case of Consumers “whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/contract demand or the billing period of the month in which the consumer has utilized at least 75% of the increased sanctioned load/contract demand whichever is earlier.”

In its aforesaid Appeal, EIL prayed that either the provisions or the billing period of month in which the consumer had utilised atleast 75% of the increased Sanctioned Load/ Contract Demand whichever is earlier be deleted from the Tariff Order or in the



alternative a Clarification may be provided that Clause 7.4 (g) in the Tariff Order shall be applicable only after the expiry of six months from the date of increase in the Sanctioned Load/Contract Demand.

h. The Hon'ble ATE, vide its Judgment dated May 12, 2008 modified the Clause 7.4(g) of the Tariff Order dated May 18, 2007, which was to be read as under:

“21. In case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increased and sanctioned load/contract demand OR the billing period after the six months in which the consumer has utilised at least the same ratio of energy consumption as percentage of increase contract demand that has been recorded prior to the increase in the sanctioned load /contract demand.

22. We also direct the first respondent to refund and adjust future billing, the amount of energy charges and other incidental charges paid by the Applicant on the basis of the benchmark units fixed in the third month (i.e., June 2006) and additional supply charges be calculated accordingly.”

- i. The aforesaid Judgment dated May 12, 2008 was passed by the ATE without hearing Ispat, who were affected thereby and in whose case, the reference consumption period had already been determined much earlier and given effect to pursuant to the then valid and existing Tariff Order dated May 18, 2007 and three clarifications thereto. The Judgment dated May 12, 2008 passed by ATE in the Appeal No. 135 of 2007 was neither implemented nor communicated to the Petitioner in normal course or other similar companies like the Appellant as far as the Petitioners are aware except in the manner and the circumstances set out herein after.
- j. The Petitioner was surprised to receive a bill dated September 15, 2009 claiming a sum of Rs.14.38 Crore under a separate item titled as “Debit Bill Adjustment”. The Petitioner thereafter, by its letter dated October 14, 2009, made enquiries to ascertain the basis of the debit adjustment made by the Respondent. The Respondent, vide its letter dated October 22, 2009, informed the Petitioner that as per the ATE Judgment dated May 12, 2008, the benchmark consumption for charging of ASC units in case of consumers whose Sanctioned Load/Contract Demand had been duly increased after the billing month of December 2005, the reference period was to be taken as billing period after six months of the increase and Sanctioned Load/Contract Demand or the billing period after six months in which the consumer has utilised atleast the same ratio of energy consumption as percentage of increase in Contract Demand that has been recorded prior to the increase in Sanctioned Load/Contract Demand. MSEDCL



further informed that as per the said Judgment, the benchmark consumption of October 2006 was being considered for charging of ASC Units (for the billing month May 2007 to June 2008) instead of June 2006 (where the maximum consumption was of the order of 165 MU as against October 2006 of 158 MU). The Petitioner also received a statement from the Respondent giving the break-up of the demand raised aggregating to Rs. 14.38 Crore.

- k. In the circumstances aforesaid, the Petitioners moved an Application being IA No. 319 of 2009 in Appeal No. 135 of 2007 before the ATE seeking inter-alia to:
 - i. Clarify that the Order dated 12.05.2008 passed in Appeal No. 135 of 2007 (M/s. Eurotex Industries & Exports Limited Vs. MSEDCL and Anr.) will be applicable to the facts of that case;
 - ii. quash the demand of Rs. 14.38 Crore raised in the bill dated 15.09.2009
- l. The said Application was heard and disposed of by Order dated November 13, 2009. The Hon'ble ATE stated in the said Order that the Petitioner may approach the Commission for redressal of its grievances as in view of the ATE Judgment, the matter was liable to be considered by the Commission. From the said Order, the Petitioner learnt that the Respondent had also filed a Review Petition No.5 of 2008 before the Hon'ble ATE. The ATE by its Judgment dated April 30, 2009 has dismissed the Respondent's Review Petition as the ATE did not find any ground to admit the application for Review of the Judgment dated May 12, 2008.
- m. In these circumstances, the Petitioner was seeking clarification on the Order dated May 18, 2007 as clarified by the Commission by Orders dated August 24, 2007, September 11, 2007,; December 17, 2007, and the ATE Judgments dated May 12, 2008 and April 30, 2009 on grounds mentioned herein below:
 - (i) The Order dated May 18, 2007 in Case No. 65 of 2006 (as clarified by the Commission its Order dated August 24, 2007, September 11, 2007, and December 17, 2007) are applicable to the Petitioner's case.
 - (ii) The Order dated May 12, 2008 passed by ATE in case of EIL is prospective in operation and applicable to only EIL's case. The ATE Judgment dated May 12, 2008 is not and cannot in law be regarded as applicable to the Petitioner's case.
 - (iii) The action of the Respondent in raising the bill dated September 15, 2009 and claiming payment of Rs. 14.38 Crore on the basis of the ATE Judgment dated May 12, 2008 is erroneous in law and unjustified. The Respondent is erroneously and contrary to law seeking to enforce Judgment dated May 12, 2008.



- (iv) The said Judgment dated May 12, 2008 is not and cannot be made applicable to the Petitioners. The Petitioner is neither a party nor was the Petitioner heard before passing that Order. The ATE which heard the application did not issue a public or other notice to concerned affected consumers.
- (v) The Petitioner submitted that the ATE Judgment dated May 12, 2008 does not and cannot in law have a retrospective effect.
- (vi) The Petitioners submitted that the Commission's Order dated August 5, 2008 in Case No. 21 of 2008 and ATE Judgment dated May 12, 2008 do not clarify but amend and alters the Tariff Order dated May 18, 2007 as clarified by Order dated August 24, 2007, September 11, 2007, and December 17, 2007. The Petitioner submitted that in the circumstances, such Judgment by ATE can only operate prospectively and can never be made effective retrospectively, particularly against persons/parties, who prior to May 12, 2008 had qualified thereunder and/or who have accrued rights thereunder (e.g. in case of the Petitioners) on the basis of the Order dated May 18, 2007 (and three Clarificatory Orders thereto) passed by the Commission.
- (vii) The Petitioners submitted that they had acted upon, had qualified and their reference period has been determined in June 2007 in accordance with the then Operative Tariff Order dated May 18, 2007 as clarified by the three Clarificatory Orders by this Commission and Petitioners have manufactured, priced and sold goods on that basis. In the circumstances, the Respondents are now estopped from revising the charges with retrospective effect or applying the ATE Judgment dated May 12, 2008 to the Petitioners. A revision of the costs of energy with retrospective effect will be unreasonable and inequitable and bad in law and will cause great loss to the Petitioners. The effect given by the Respondents to the said ATE Judgment is unfair and unjust. Hence, the said Judgment cannot be made to operate retrospectively.
- (viii) The Petitioner further submitted that the ATE Judgment dated May 12, 2008 does not clarify but in effect alters and amends the Tariff Order dated May 18, 2007, and amendment of Tariff cannot be made except by following the procedure prescribed for passing of a Tariff Order. The said prescribed procedure has not been followed in the instant case.
- (ix) The Petitioners submitted that the ATE Judgment dated May 12, 2008 can never validly be regarded as being clarificatory and operative with retrospective effect so as to adversely affect the Parties who have already acted and/or have qualified and on whom Bills have been raised and paid. The



Petitioner, who had achieved more than 75% of the Contract Demand in the month of June 2006 and bill for units consumed in that month was Rs.16.48 Crore. However, based on the purported application of the ATE Judgment dated May 12, 2008, the benchmark consumption is sought to be reduced, which is against the interest of the Petitioner. The additional burden with respect to ASC to the tune of Rs.14.38 Crore has been saddled in the monthly bill of the Petitioner, which is wholly impermissible.

- (x) The ATE Judgment dated May 12, 2008 is void and of no affect whatsoever and passed without jurisdiction and power and/or in excess of jurisdiction and power.
- (xi) The Petitioner submitted that while the Tariff Order dated May 18, 2007 was passed after hearing all the Parties, while the connected review or Clarificatory Petition seeking to modify the directions contained in the said Tariff Order had been made in absence of the necessary Parties and on the said ground the action of the Respondent in resorting to the said Order and levying additional demand from September 2009 is wholly unsustainable.
- (xii) The Petitioner further submitted that ATE Judgment dated May 12, 2008 while disposing of the appeal filed by EIL, gave a direction to modify Clause 7.4(g) of the Tariff Order without affording opportunity to all the affected persons and the decision being inter party is only applicable to the case of the Petitioner before it and cannot be made applicable to all consumers. The decision of the Respondent to rely on the said Judgment and issue the Notice of Demand belatedly in September 2009 is wholly untenable and unjustified.
- (xiii) The Petitioner submitted that from a perusal of Para 22 of the Judgment dated May 12, 2008, it is evident that ATE only directed the Respondent to refund the amount of Energy Charges and other incidental Charges paid by the Appellant therein (EIL) on the basis of benchmark fixed as per the Tariff Order dated May 18, 2007. In any event, it cannot be applicable to all consumers without any notice or opportunity of hearing afforded to such affected persons.
- (xiv) The Petitioner submitted that in any event, the demand cannot be made by Respondent with retrospective effect when the Hon'ble Supreme Court in several cases has held that any Order involving commercial implications cannot be levied with retrospective affect. In the instant case, the goods manufactured by the Petitioner during the relevant period have been sold to the consumers, and accounts for the relevant financial year have also been



closed. The electricity charges are a major component of the production and it affects all the commercial and financial position and viability of the manufacturing units, which in any event is legally unsustainable.

- (xv) The ATE failed to consider that earlier the consumers had 2 options available whichever could be achieved earlier. The direction of ATE is confined to EIL, which is evident from the fact that it would affect a large section of consumers, if they are charged the same without any notice. ATE directed the Respondent to refund/adjust only in the case of the Appellant therein. In any event, the case of EIL cannot be a guiding principle for other consumers whose processes are entirely different from EIL and who may achieve the stipulated condition much before six months, and the consumers cannot be penalised merely because they got the equipments stabilized before six months.
- (xvi) The Petitioner submitted that in any matter involving amendment to Tariff Order affecting the public at large, ATE ought to have remanded the matter back to the Commission, providing guidelines for implementation which was the approach adopted by ATE in case of Malls/Multiplexes wherein ATE issued guidelines to the Commission for gradual reduction in Cross-Subsidy based on which the Commission had designed the tariff in the recent Tariff Order.

4. The Commission, vide its Notice dated January 14, 2010, scheduled a hearing in the matter on January 25, 2010, and directed the Petitioner to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives latest by January 19, 2010. The Commission also directed the Respondent to submit its comments, if any, on the above Petition latest by January 22, 2010 and serve the copy of the same on the Petitioner and the four authorised Consumer Representatives.

5. MSEDCL vide its letter dated January 20, 2010, submitted that it has not received the Petition filed by M/s. Ispat Industries Ltd. Further, MSEDCL, vide its letter dated January 21, 2010 submitted that it has received the copy of Petition on January 20, 2010, and since, the matter is scheduled for hearing on January 25, 2010, requested the Commission to allow 15 days time for submitting their say in the matter.

6. The hearing in the matter was held at the Commission's office on January 25, 2010. During the hearing, Shri. Shaunak Thacker, Advocate and Shri. Rahul Priyadarshi, Sr.



Manager, Ispat Industries Ltd. and others appeared on behalf of the Petitioner, and Shri. P.S. Morey, S.E. (Commercial), MSEDCL appeared on behalf of the Respondent.

7. Shri. Shaunak Thacker submitted that the Petitioner had filed an Appeal before the ATE. The ATE passed its Judgment in the matter saying that this Application for clarification should be considered by the Commission, therefore, Ispat was appearing before the Commission for clarification of the Order. Shri. Thacker reiterated the submissions made in the Petition and submitted that the Petitioner has not received a copy of the reply to the Petition from the Respondent.

8. The Commission enquired from MSEDCL regarding the impact of ATE Judgment in Appeal No. 135 of 2007, including the number of consumers affected, and amount of Credit and Debit from MSEDCL on this account. MSEDCL requested the Commission to allow 15 days time to submit the same.

9. The Commission directed the Respondent to submit their reply including total number of cases reviewed where MSEDCL has refunded actual amounts, within 15 days from the date of hearing and serve a copy of the said reply to the Petitioner.

10. MSEDCL filed its written submission dated February 8, 2010, and submitted as under:

- a) M/s. Ispat Industries Ltd., situated at Dolvi, is an EHV consumer of MSEDCL having Contract Demand of 300.77 MVA and as per the Commission's Order, MSEDCL revised the Tariff with effect from May 1, 2007. The Contract Demand of the Petitioner was enhanced from 205 MVA to 300.77 MVA w.e.f. April 2006 and therefore, the reference period for charging of ASC was determined as per the original Clause No. 7.4(g) of the Tariff Order
- b) Accordingly, MSEDCL issued the energy bills to the Petitioner from May 2007 considering the reference period consumption as 158.79 MU, i.e., based on energy units consumed in April 2006.
- c) The Commission issued Clarificatory Orders dated August 24, 2007 and September 11, 2007 in order to clarify the detailed Tariff Order dated May 18, 2007 for determining the reference period where increase in Contract Demand is occurred as under:

"In case of consumers whose Sanctioned load/Contract Demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the



Sanctioned Load/Contract Demand for the billing period of the month in which the third occasion of the consumer utilizing at least 75% of the increased sanctioned load/Contract Demand after increasing the Contract demand is recorded, whichever is earlier.”

d) The Clarificatory Order was made effective from September 2007 energy bill considering the fact that the Petitioner's Contract Demand was enhanced in April 2006. Hence, the reference period was determined as consumption in the June 2006 energy bill, i.e., 164.85 MU (third occasion of utilisation of atleast 75% of the increased Contract Demand). This Clarificatory Order was applicable with retrospective effect from May 1, 2007. Hence, the bills for the period from May 2007 to August 2007 were revised as per the Order and credit due to revision of bills amounting to Rs. 2.45 crore was given in their monthly energy bills in the month November 2007.

e) The ruling of ATE in Appeal No. 135 of 2007 by its Judgment dated May 12, 2008 modified the Clause No. 7.4(g) of the Tariff Order dated May 18, 2007 as under:

*“In the case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December, 2005 the reference period may be taken as billing period after six months of the increase and the sanctioned load / contract demand **OR** the billing period after six months in which the consumer has utilized at least the same ratio of energy consumption as percentage of increase contract demand that has been recorded prior to the increase in sanctioned load/contract demand.”*

f) The Commission, in its Orders in Case No.21 of 2008 dated August 05, 2008 and in Case No. 30 of 2008 dated September 29, 2008 directed as under:

“Since ATE has modified the relevant paragraph of the impugned clarificatory order MSEDCL has to revise the bills of all similarly placed consumers and accordingly refund /adjust the amount of energy charges of ASC with effect from May 1, 2007.”

g) Accordingly, the criteria modified by the ATE was applied for all the eligible consumers of MSEDCL who have increased the Sanctioned Load/Contract Demand after the billing month of December 2005. As per the ATE Order, in case of M/s. Ispat Industries Ltd., the reference period for charging of ASC units was considered as the consumption of October 2006 energy bill ,i.e., 157896000 Units, i.e., the consumption after six months of the increase of the Contract Demand. Accordingly,



the energy bills for the period from May 2007 to June 2008 were revised and the recovery amount of Rs.14.38 crore was charged in September 2009.

- h) The Petitioner has requested for grant of installments for payment of the said recovery vide their letter dated October 30, 2009. As per the request, Petitioner has been granted permission to pay the amount in 14 instalments. Out of 14 instalments, 4 instalments each amounting to Rs. 1.02 crore have been paid by the Petitioner upto December 2009. Hence, there is no question of quashing the demand of Rs.14.38 Crore.
- i) The Respondent has followed the Order passed by the Commission and other respective authorities issued from time to time and taken necessary action accordingly.
- j) The impact after the implementation of the ATE Judgment is as follows:
- i. Total No. of consumers to whom credit has been given: 353
 - ii. Total amount of credit given : Rs. 18.72 Crore
 - iii. Total No. consumers to whom debit has been given : 388
 - iv. Total amount of debit given : Rs.39.78 Crore
 - v. Total No. of consumers affected : 741
 - vi. Total amount of debit (Net) : Rs. 21.06 Crore

11. The Commission, vide its Notice dated February 3, 2010, scheduled the further hearing on the matter on Thursday, February 25, 2010 in the office of the Commission.

12. During the hearing, Shri. Shaunak Thacker, Advocate and Shri. Rahul Priyadarshi, Sr. Manager, Ispat Industries Ltd. appeared on behalf of the Petitioner, and Shri. N.G. Naru, CE (Commercial), Shri. S. V. Bapat, SE (TRC) and Shri. P.S. Morey, SE (Commercial), appeared on behalf of the Respondent. During the hearing, Shri. Thacker reiterated the submissions made in the written submission. The Petitioner added that MSEDCL has relied upon the following paragraph of the Commission's Orders in Case No.21 of 2008 dated August 05, 2008 and in Case No. 30 of 2008 dated September 29, 2008:

“Since the ATE has modified the relevant paragraph in the impugned clarificatory order MSEDCL has to revise the bills of all similarly placed consumers and accordingly refund/ adjust the amount of energy charges of ASC with effect from May 1, 2007”.



13. The Petitioner submitted that in accordance with the Commission's above stated directions, the bill has to be revised for all consumers who are similarly placed as EIL, whereas Ispat is not placed similarly to EIL, having already qualified as per the earlier definition of Clause 7.4 (g).

14. The Commission observed that consequent to the implementation of the ATE Judgment, MSEDCL has given credit on account of ASC refund of Rs. 18.72 crore, and has raised debit bills on account of ASC refund to the extent of Rs. 39.78 crore, as the ATE Judgment has been made applicable for all the consumers who are similarly placed to EIL. Out of the Rs. 39.78 crore of debit bills, Rs. 14.38 crore, is payable by Ispat. MSEDCL added that all the credits had been passed on, and since the recovery was being made with retrospective effect, Ispat had been permitted to pay in instalments.

15. Having heard the Parties and after considering the material placed on record, the Commission is of the view as under:

16. Ispat has filed this Petition seeking clarification on the applicability of the ATE Judgment dated May 12, 2008 in Appeal No. 135 of 2007 to Ispat, since the retrospective implementation of the above ATE Judgment by MSEDCL to all the consumers, has resulted in Ispat having to pay an additional amount of Rs. 14.38 crore to MSEDCL. Ispat has contended that the ATE Judgment dated May 12, 2008 in Appeal No. 135 of 2007 is not applicable to Ispat, and is applicable only to the original Appellant, viz., EIL.

17. The Hon'ble ATE, vide its Judgment dated May 12, 2008 in Appeal No. 135 of 2007, modified the Clause 7.4 (g) of the Tariff Order dated May 18, 2007, as reproduced below:

"21. In view of the above we modify Clause 7.4(g) of the Tariff Order dated 18 Mar 07 to read as under.

*"In the case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December, 2005 the reference period may be taken as billing period after six months of the increase and the sanctioned load / contract demand **OR** the billing period after six months in which the consumer has utilized at least the same ratio of energy consumption as percentage of increase contract demand that has been recorded prior to the increase in sanctioned load/contract demand.*

*22. We also direct the first respondent to refund and adjust against future billings, the amount of energy charges and other incidental charges paid by the Appellant on the basis of the benchmark units fixed in the third month (i.e. June 2006) and additional supply charges be calculated accordingly" (**emphasis added**)*



18. Subsequent to the Judgment of the ATE in Appeal No. 135 of 2007, MSEDCL filed a Review Petition (No. 5 of 2008) in Appeal No. 135 of 2007, before the ATE. The ATE, vide its Judgment dated April 30, 2009, held as under:

"5. The Applicant has sought for review of the impugned order on the ground of error apparent on the face of the record contending that the impugned order has modified the clause 7.4 (g) of the said tariff order without merit. The applicant has raised the following points:

...

(b) The Appeal is based on the individual inconvenience of one industrial consumer of a class and no other consumer from the same class has challenged it. This Appeal should not have been entertained.

(c) The impugned order under review providing for a time frame for normalizing the production process based on unsubstantiated statement of the appellant would confine only to its unit but it makes it applicable across the board for all the consumers in that class.

...

7. We will examine the above points briefly herein below.

I. ... As regards Point (b) above, the remedy provided in the instant case to a consumer belonging to a specific class against the tariff order will surely be applicable to other consumers in the same class as it pertains to modification of Clause 7.4 (g) of the tariff order, which will be applicable without any discrimination to all the consumers of that class. Consequently, Applicant's apprehension that the relief provided will be limited to suit the convenience of an individual consumer is ill founded. Points (a) & (b) are, therefore, not sustainable and are rejected.

II. With reference to the Points (c) & (d) above, it is to be emphasized that since the criterion for determining the Reference Period has to apply uniformly to all industries with distinctive business, it is bound to be broad-based taking into account the requirements of all sectors ...

...

13. Before parting with the order we may clarify that the billing periods for benchmarking of Reference Periods for ASC computation in both the alternatives of the modified clause 7.4 (g) are to be identically same as there is no rationale for stabilization period to be different for the same system. It further specifies that the additional consumption in the increased sanctioned load/contract demand recorded



during the Reference Period should, in percentage pro-rata basis, be equivalent to at least the same ratio of energy consumption as percentage of contract demand that existed prior to the increase in sanctioned load or contract demand. Thus, the billing period after six months of increase in sanctioned load/contract demand load will be treated as Reference Period for the purpose of ASC computation and even if, the expanded system has not recorded any consumption in the Reference Period, it will be deemed to have at least utilized the energy in the same ratio that existed prior to increase in sanctioned load or contract demand. The differentiation between two alternatives in original clause 7.4 (g) being due to different time-periods for stabilization (one time period linked to achievement of 75% of contract demand) having been dispensed with in the order under review, both alternatives become equal in effect. The energy consumption in Reference Period for increase in the contract demand is deemed to be at least on pro-rata basis equal to that existed prior to the increase in sanctioned load or contracted demand." (emphasis added)

19. A plain reading of the Hon'ble ATE Judgments in Appeal No. 135 of 2007 and on Review Petition (No. 5 of 2008) in Appeal No. 135 of 2007, shows that the ATE has modified the relevant Clause 7.4 (g) of the original Order, and that the modification is applicable without any discrimination to any consumer in the same class, rather than being applicable only to EIL, as contended by Ispat. The ATE has further clarified that the billing periods for bench marking of Reference Periods for ASC computation in both the alternatives of the modified clause 7.4 (g) are to be identically same and even if, the expanded system has not recorded any consumption in the Reference Period, it will be deemed to have at least utilized the energy in the same ratio that existed prior to increase in sanctioned load or contract demand.

20. In view of the above, the Commission rules that there is no illegality in the claim raised by MSEDCL on Ispat, and the amount of Rs. 14.38 crore is payable by Ispat to MSEDCL. Hence, there is no need to quash the bill raised by MSEDCL in this regard.

21. As regards giving retrospective effect to the modified Clause 7.4 (g), it is clarified that in its three Clarificatory Orders, the Commission had directed MSEDCL to ensure that the clarifications given in the Clarificatory Orders are incorporated with retrospective effect from May 1, 2007 and the consumers' bills are revised accordingly. Similarly, in the case of the ATE Judgment, the modified Clause 7.4 (g) is applicable from May 2007, and the consumers' energy bills have to be revised with retrospective effect from May 1, 2007.



22. As regards other contentions raised by Ispat regarding the procedure followed by the ATE while giving its Judgment including following of principles of natural justice by the ATE, Ispat may agitate the matter before the Appropriate forum, since these are not within the jurisdiction of the Commission.

With the above observations and ruling, the Petition filed by Ispat Industries Limited in Case No. 92 of 2009 stands disposed off.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(K. N. Khawarey)
Secretary, MERC