

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 138 of 2011

In the matter of
Petition filed by Lloyds Steel Industries Ltd., seeking payment of interest on
Regulatory Liability Charges collected by Maharashtra State Electricity Distribution
Co. Ltd.

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

M/s Lloyds Steel Industries Ltd.,
Trade World, C Wing, Kamala City,
Senapati Bapat Marg, Lower Parel,
Mumbai 400 013

.....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Bandra (East)
Mumbai 400 051.

.....Respondent

Present during the hearing:

For the Petitioner: Shri Prashant Puri, Lloyds Steel Industries Ltd.

For the Respondent: Shri S.V. Bapat, SE (TRC), MSEDCL

ORDER

Dated: 3 August, 2012

M/s Lloyds Steel Industries Ltd., submitted a Petition under affidavit on 21 September, 2011 seeking payment of interest on regulatory liability charges (RLC) collected by Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL). The Petition is said to be filed under Regulation 85 of MERC (Conduct of Business) Regulations, 2004 (Review of decisions, directions, and orders).

2. The prayers of the Petitioner are as under:

“

A. That the respondents to be directed to refund to the Applicant principal amount unpaid till date amounting to Rs. 26.21 Crs along with interest @ 11.75% per annum against RLC, as per the calculations made by the Petitioner amounting to Rs. 67.29 Crs till 30/09/2011 and on the same rate on and from 30/09/2011 till date of payment, as per the attached statement.

B. That such other orders may kindly be passed, as may serve the ends of justice”

3. The Petitioner submitted as under:

- a. The Petitioner is a company named M/s. Lloyds Steel Industries Ltd., engaged in the business of manufacturing steel mainly hot rolled and cold rolled coils and plates at their works located in the village of Bhugaon, district Wardha. It is among the largest consumers of electricity with a 220 kV extra high voltage line from Maharashtra State Electricity Distribution Company Ltd. (MSEDCL).
- b. The Commission, in Tariff Order dated 10 March, 2004 in Case No. 2 of 2003, introduced the concept of RLC which allowed the subsidising categories like the Petitioner to contribute amounts to Maharashtra State Electricity Board (MSEB), the predecessor of the Respondent Distribution Company, keep it afloat and thus enable it to meet the cost of the excess transmission and distribution loss. The Tariff Order *inter alia* provided for refund of the amount to these consumer categories in future through Tariff once transmission and distribution losses reduce.

- c. As per the above Order, MSEDCL charged RLC along with energy charge from March 2004 till October 2006. MSEDCL recovered RLC amounting to Rs. 67.08 crore from the Petitioner.
- d. Subsequently, the Commission in Order dated 20 October, 2006 in Case No. 54 of 2005 directed MSEDCL to stop the recovery of RLC with effect from 1 October, 2006. The Commission also directed MSEDCL to refund the collected RLC amount to the consumers. MSEDCL accepted that the RLC has to be refunded to the consumers.
- e. The Commission in Tariff Order dated 18 May, 2007 in Case No. 65 of 2006 for FY 2007-08 directed MSEDCL to refund RLC of Rs. 500 crore out of the total amount of Rs. 3225 crore to specified consumer categories.
- f. The Commission in the above referred Order specifically directed MSEDCL to refund Rs. 500 crore towards RLC which were given like a loan by the subsidising categories like the Petitioner to the Distribution Company i.e., MSEDCL. However, in 2007, MSEDCL failed to refund RLC in the bills issued for the month of May and June 2007.
- g. MSEDCL filed an application before the Commission seeking clarification on the directions given in the above mentioned Order. The Commission vide Order dated 24 August, 2007 in Case No. 26 of 2007 and Case No. 65 of 2006 issued a Clarificatory Order. The relevant portion of the said Order is reproduced below:

“The refund is to be made to the category as a whole, and not to the respective consumer. Further, the refund has to be made in the same proportion as the contribution of RLC by the respective consumer category. The Commission has specified below, the amount of RLC refund in paise/kWh for the respective consumer category, to ensure ample clarity on the matter. Further, since the refund in paise/kWh has been computed on the basis of the annual sales projected for FY 2007-08, the actual amount of category-wise refund will have to be trued up at the end of the year, depending on the actual sales to the respective consumer category.

...

Since MSEDCL has not refunded the RLC for the bills issued till date during the period May 2007 to August 2007, the Commission has determined the monthly RLC refund in such a manner that the entire refund of Rs. 500 crores occurs over the balance seven-months of the year, as computed above. This will also enable MSEDCL to overcome any liquidity constraints, which could occur if MSEDCL were directed to combine the refund of past three months with that due in August 2007, and give the balance refund thereafter.”

Further, the Commission held that the refund has to be made in the same proportion as the contribution of RLC by the respective consumer categories.

- h. MSEDCL filed a Review Petition on 24 September, 2007, seeking a review of the said Order, which was dismissed on November 1, 2007 in Case No. 47 of 2007 for the reasons stated therein.
- i. Aggrieved by the Commission’s decision, MSEDCL filed an Appeal before the Hon’ble Appellate Tribunal for Electricity (ATE) in AFR No. 1386 of 2007.
- j. One of the subsidising consumers, M/s Ispat Industries Ltd., filed an application to be impleaded in Appeal No. 109 of 2007 seeking directions upon MSEDCL for refund of RLC pursuant to the dismissal of the Review Petition.
- k. The Hon’ble ATE allowed AFR No. 1386 of 2007 by setting aside the Order passed by the Commission and *inter alia* ruled as under:

“We find that the order dated November 1, 2007 rejecting the review petition is inter-alia based on the assumption that the appellant besides having filed the review petition had also preferred an appeal from the order of the MERC dated August 24, 2007 and the appeal was pending before this Tribunal. This assumption was not correct as no appeal was presented or pending against the order of the MERC dated August 24, 2007. This being so, the Order of the MERC dated November 1, 2007 in review petition filed against the order dated August 24, 2007, which proceeds on erroneous assumption, is required to be set aside.”

- l. In pursuance of the above, the Commission passed Order dated 2 April, 2008 in Case No. 47 and 92 of 2007 and directed MSEDCL to refund RLC, ruling that the Review Petition is allowed and RLC amounts that are required to be returned should be effected by reduction in Tariff for the subsidising consumer categories that had contributed RLC while simultaneously allowing MSEDCL to claim these amounts as expense in its ARR so that all the consumers equally bear RLC.

The Commission further ruled that no interest would be payable by MSEDCL to the contributing subsidising categories with regard to the amount of RLC not refunded till date.

- m. Further, the Commission passed a Tariff Order dated 20 June, 2008 for the FY 2008-09, wherein the Commission directed MSEDCL to refund Rs. 500 crore against the total amount of Rs. 3225 crore collected as RLC between March 2004 and October 2006.
- n. One of the subsidising consumers, Ispat Industries Ltd., filed an Appeal before the Hon'ble ATE in Appeal No.70 of 2008 seeking payment of interest on the collected RLC against the Commission's Order dated 2 April, 2008. It also filed Appeal No. 110 of 2008 against the Tariff Order dated 20 June, 2008. The Hon'ble ATE vide Judgment dated 5 August, 2010 *inter alia* ruled as under:

“We hold that the Appellant is entitled to the payment of interest along with the principal amount. To this extent, impugned orders are set aside. The Appellant claims the interest to be calculated at 18% p.a. However, in our opinion, it would be appropriate to direct the State Commission to fix the rate of interest keeping in view the prevalent prime lending rate.”

- o. The Petitioner had partially received the principal amount from MSEDCL amounting to Rs. 41.24 crore out of Rs. 67.45 crore. Thus, the balance amount works out to Rs. 26.21 crore. The interest amount on this principle amount works out to Rs. 41.08 crore as on 30 September, 2011. The interest rate of 11.75% is taken from the Commission's Order dated 1 March, 2011 in Case 44 of 2010.
- p. The Petitioner vide letter dated 7 September, 2010 demanded MSEDCL to increase the quantum of RLC refund and include interest payment also in the monthly refund which is given in the monthly energy bill of the Petitioner.

q. In its reply to the Petitioner, MSEDCL denied their liability to pay stating that there is no specific Order from the competent authority and an increase in quantum of RLC refund will be considered only after the Commission's directives. Hence, the Petitioner has approached the Commission.

r. Thereafter, the Petitioner filed a Petition before the Commission on 28 October, 2010 (Case No. 75 of 2010) and requested the Commission for the following:

“

a) *That the respondents to be directed to pay interest @18% per annum as per the calculation made by the Petitioner amounting to Rs 93.00 Crs till 15/09/2010 and on the same rate on and from 15/09/2010 till date of payment in monthly energy bills.*

b) *That the respondents may be directed to refund this amount in monthly energy bill of Petitioner by crediting the same in equal installments such as the refund of interest is paid over within the period of 24 months.”*

s. Subsequent to the hearing conducted by the Commission in the above matter, an Order was issued by the Commission on 30 December, 2010. The relevant para is extracted as below:

“Having heard the parties and after considering the materials placed on record, the Commission is of the view that it would not be appropriate for this Commission to interpret as to whether Hon'ble Appellate Tribunal's aforesaid Judgment in Appeal Nos. 70 and 110 of 2008 dated 5 August, 2010 would also apply to the present petitioner when the present petitioner was not a party to the appeal that culminated into the aforesaid Judgement of the Hon'ble Appellate Tribunal. In view thereof, it would perhaps be apt for the Petitioner to move the Hon'ble Appellate Tribunal for a clarification in this regard.”

t. Therefore, the Petitioner filed an Application for clarification before the Hon'ble ATE in Appeal No. 50 of 2011. The prayers placed before the Hon'ble ATE are as under:

“

i. *that appropriate clarification of the judgment dated 05/08/10 may kindly be issued, inter-alia clarifying that the word “applicant” mentioned in the summary of findings, in paragraph 31 would mean all subsidising consumers*

like applicant and further clarification as may be deemed necessary, may kindly be made by this Hon'ble Appellate Tribunal, in the interest of justice.

- ii. *Pass any other order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice."*

- u. The Hon'ble ATE issued its Judgment dated 31 May, 2011 in the above matter. The relevant para is as under:

“(i) The judgement of this Tribunal dated 5.8.2010 in the Appeal No.70 of 2008 filed by M/s. Ispat Industries Ltd is a judgement in rem. Therefore, the relief granted to M/s. Ispat Industries, the Appellant in Appeal No.70/2008 dated 5.8.2010 is applicable to all the subsidizing categories of consumers of the Distribution Company (R-2) who contributed the RLC amount to the Distribution Company as per the order of the State Commission.

(ii) The reading of the Judgement dated 5.8.2010 as a whole would clearly indicate that the findings have been rendered by this Tribunal that the benefit relating to the payment of interest would accrue to all the subsidizing categories of consumers including the Appellant. Therefore, it is clear that all the similarly situated subsidizing category consumers like the Appellant and the intervening parties who have contributed substantial amount as RLC to Distribution Company would be clearly entitled to the payment of the said amount.

In view of the above conclusions, the Appellant succeeds in these Appeals. Accordingly, the State Commission is directed to ensure that the Appellant as well as the intervening parties are paid the principal amount along with the interest which has to be fixed keeping in view the prevailing prime lending rate as indicated in the judgement dated 5.8.2010.”

- v. In the meanwhile, the Commission issued an Order on 1 March, 2011 in Case 44 of 2010 where it ruled that interest on RLC shall be paid at the rate of 11.75% per annum.
- w. Therefore, in view of the above-mentioned facts and records, the Petitioner filed the present Petition.

4. The Commission in pursuance of the directives of the Hon'ble ATE vide Order dated 6 September, 2011 in Appeal No. 50 of 2011 scheduled a public hearing in the matter on January 16, 2012 at Centrum Hall, World Trade Centre, Cuffe Parade, Mumbai and issued a public notice on 17 December, 2011 in relation thereto.

5. Comments and suggestions received during the hearing are summarised below:

a) Hon'ble ATE's Judgment:

Shri Prashant Puri, Lloyds Steel Ltd. reiterated the Judgment of the Hon'ble ATE w.r.t. the direction given to the Commission for ensuring that the principal amount along with the interest is to be fixed keeping in view the prevailing prime lending rate as indicated in the Judgment dated 5 August, 2010.

Shri Rajput Madan, Bagla of Total Solution, Shri Mukund Kulkarni of the Chamber of Marathwada Industries & Agriculture and others referred to the ATE's Judgment and emphasized the below-mentioned para:

“The effect of setting aside the impugned orders to the extent of non grant of interest clearly means that not only M/s. MSEDCL (R-2) shall have to pay interest to M/s. Ispat Industries but also to all other subsidizing consumers including the Appellant who contributed and paid Regulatory Liability Charges to the Distribution Company.” (Emphasis added)

In view of the above, they requested the Commission to issue directions to MSEDCL.

b) RLC Refund:

Shri Shelke, of Kalyani Carpenter Special Steel Ltd., Pune, submitted that the Commission has already directed MSEDCL to refund the RLC amount collected from the consumers. However, MSEDCL has not completely refunded the same. Therefore, Shri Shelke requested the Commission to direct MSEDCL to refund the amount immediately.

Shri Ashok Gupta, Areeb Rolling Ltd. submitted that RLC is refunded by MSEDCL in the month of April/May for the whole year and not on monthly basis. He also submitted that they have received the ASC amount completely; however, RLC refund is remaining. He submitted that the principal for Areeb Rolling Ltd. amounts to about only Rs. 2 crore; even that has not been refunded by MSEDCL. Representative from Castings Ltd. submitted that the RLC should be refunded wholly in one stroke. Shri Das, Millennium Beer Industries Ltd. along with several

others requested the Commission to direct MSEDCL to refund the RLC amount to consumers along with interest.

Shri N.N. Hariharan of Lloyds Line Pipes Ltd. submitted that they had received an amount of Rs. 40 lakh from MSEDCL and Rs. 19 lakh is balance. Further, Rs. 38 lakh amounting to interest is yet to be refunded by MSEDCL. Similarly, other representatives from various companies submitted the amount of RLC to be refunded by MSEDCL and requested the Commission to direct MSEDCL to refund the principal amount along with interest. Lloyds Steel Ltd. submitted that MSEDCL is yet to pay Rs. 2,73,985 as principal amount and interest amounting to about Rs. 5,23,396. Therefore, the Commission may advise MSEDCL to refund the same.

c) Jurisdiction of the Commission for conducting public hearing:

Shri Pratap Hogade, Maharashtra Rajya Veej Grahak Sanghatana opposed the public hearing. Shri Hogade submitted that the ATE has not directed or advised the Commission to schedule a public hearing in the matter. Therefore, a public hearing is not maintainable in the matter.

d) Public Notice:

Shri Pratap Hogade submitted that the public notice issued by the Commission is also not in consonance with the ATE's Judgment dated 6 September, 2011. Further, Shri Hogade submitted that the legal provisions or the objective or purpose for which the public hearing was scheduled was not mentioned in the public notice.

e) RLC paid to the consumers:

Shri Hogade submitted that RLC was collected from all subsidising consumers. Therefore, the Commission should have mentioned the same, instead of mentioning the refund of RLC with interest to HT consumers. Representative from Indo Rama Synthetics Ltd. submitted that all the subsidising consumers should get RLC refund.

f) Refund of RLC to PD consumers:

Shri Vasant Shah, Realty Investment Finance Management Power Solutions submitted that since they are permanently disconnected consumers of MSEDCL, MSEDCL has not refunded the RLC amount or the interest due to them. Therefore, Shri Shah requested the Commission to direct MSEDCL to refund RLC along with interest to such consumers.

g) Interest on RLC:

Shri T. Sivaramakrishnan, Pepsico India Holdings Pvt. Ltd., submitted that they are HT consumers and are receiving the RLC amount from MSEDCL. However, the interest on the principal amount has not been paid and requested the Commission to consider their application for the same.

Shri Thilvekar, SAB Miller and Shri A.K. Das, Millennium Beer Industries Ltd. along with others submitted that the Commission has fixed an interest rate of 11.75% per annum. Bankers are collecting interest on monthly basis while the Commission has fixed interest on per annum basis. They submitted that the Commission has not allowed interest on RLC from the date of discontinuance of RLC, i.e. from October 1, 2006; instead, it has allowed refund from the actual refund date, i.e., from July 7, 2008. Therefore, industrial consumers are losing money.

Further, they submitted that MSEDCL has used the amount for its working capital needs because of continuous increase of their arrears. Therefore, the interest amount on RLC should not be included in the ARR as expense. In case the same is included in the ARR, then consumers who had contributed towards RLC should get partial interest on RLC.

Shri Ashok Kumar Radhakrishnan, Cargill India Pvt. Ltd., submitted that MSEDCL should be directed to refund the RLC at an interest rate of 18% on Rs. 12 crore, collected by MSEDCL. Shri R.L. Athalye, Steel Authority of India Ltd., requested the Commission to direct MSEDCL to pay interest at the rate of 11.75% per annum as determined by the Commission amounting to Rs. 27 crore in its monthly energy bill. Sudal Industries Ltd. submitted that the interest rate fixed (11.75%) in case of Ispat Industries should be made applicable to all the other consumers.

h) Intervention application:

Shri Uday Kamat, Managing Director, Umred Agro Complex Ltd. filed an intervention application in the present matter stating that it is also a subsidizing consumer and is entitled for interest at prime lending rate on the RLC amount.

i) RLC refund fixation:

Representative from Indo Rama Synthetics Ltd. and Shri Pratap Hogade, Maharashtra Rajya Veej Grahak Sanghatana, submitted that the Commission should take suo moto action in this matter rather than waiting for MSEDCL's response and should fix the RLC refund amount.

Shri R.B. Shrigod, Bharat Forge Ltd., Pune and Shri Shelke, Kalyani Carpenter Special Steel Ltd., suggested that the Commission should decide the methodology for refund of the balance RLC amount along with the interest rate.

6. During the public hearing, MSEDCL submitted that the Hon'ble ATE delivered its Judgment on 6 September, 2011 in Appeal No. 50 of 2011. However, MSEDCL has filed a Civil Appeal (Appeal No. 2286 of 2012) before the Hon'ble Supreme Court of India against the aforesaid ATE Judgment.

7. In the said Civil Appeal No. 2286 of 2012, Hon'ble Supreme Court on 21 April, 2012 has passed the following order:

“Delay condoned.

Exemption allowed.

Permission to bring on record additional documents facts and grounds is granted.

The Civil Appeal is admitted.

Tag this Appeal with Civil Appeal No. 10279-80 of 2010.”

The Commission is of the view that once the matter is sub-judice before the Hon'ble Supreme Court and the Hon'ble Supreme Court is seized of these issues as a result it would not be proper to precipitate any action in this matter.

In view of the above, the petition stands adjourned *sine die* with the liberty to mention once the Hon'ble Supreme Court finally disposes of the aforesaid civil appeals.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman