

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 25 of 2009**

**In the matter of**  
**Provision for recovery of Arbitration claim being payable to M/s Datar Switch Gear Ltd.**

**Shri V. P. Raja, Chairman**  
**Shri S. B. Kulkarni, Member**

**ORDER**

**Dated: December 14, 2009**

M/s Maharashtra State Electricity Distribution Co. Ltd. have submitted a Petition under affidavit before the Commission on June 1, 2009 seeking directives of the Commission to permit it to recover the liability of an amount of Rs. 265 crore arising out of the claim of Datar Switch Gear Ltd. as per the Supreme Court Order dated May 15, 2009.

2. The prayers of MSEDCL are as follows:

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- a) *The Hon'ble Commission may be pleased to invoke powers conferred under Section 62 (4) of the Electricity Act, 2003 and may further be pleased to permit MSEDCL to recover liability arising out of the claim of Datar switch Gear ltd. As per Supreme Court Order dated 15<sup>th</sup> May 2009, annexed as Exhibit B to this Petition;*
- b) *The Hon'ble Commission may consider the Petition for a favourable dispensation;*
- c) *The Hon'ble Commission may condone errors / omission, if any, and may please give an opportunity to rectify the same & to file additional data, information as may be necessary.”*

3. The Commission, vide its Notice dated June 15, 2009, scheduled the hearing in the matter on July 7, 2009, in the presence of the four consumer representatives

authorised on a standing basis under Section 94(3) of the EA 2003 to represent the interest of the consumers in the proceedings before the Commission. The Commission also directed the Petitioner to serve a copy of its Petition, along with its accompaniments, to the four consumer representatives.

4. Further in the matter, MSEDCL vide its letter dated June 29, 2009 requested the Commission to postpone the hearing, accordingly the Commission postponed the hearing to July 14, 2009.

5. During the hearing MSEDCL submitted that in compliance of the Supreme Court Order, MSEDCL have deposited the required amount of Rs.65 Crore.

6. Further, in the matter MSEDCL requested the Commission to grant time to study the matter. The Commission granted the request. The Commission vide its Notice dated July 14, 2009 scheduled the hearing in the matter on August 3, 2009.

7. During the hearing MSEDCL submitted that in FY 1993-94, MSEDCL (erstwhile MSEB) awarded a contract to M/s. Datar Switch Gear Ltd. (DSL) for installation of Low Tension Load Management System (LTMS) at various locations in the State. DSL was again awarded another contract for installation of 11760 LTMS. In FY 1999-00, DSL on the basis of alleged default on the part of MSEB, unilaterally terminated these contracts and indicated the unwillingness of DSL to continue to maintain LTMS till then supplied / installed at different locations in the State of Maharashtra. Further, in the matter DSL initiated the legal action, including arbitration, against the MSEB alleging wilful violation of the contract by MSEB.

8. Further in the matter, the Arbitrator decided the claim in favour of DSL by awarding them a sum of Rs. 179 Crore as damages plus 10% interest from the date of the award of the contract till the realisation. Further, MSEDCL filed an appeal before the Hon'ble High Court, Mumbai. The Hon'ble High Court issued an Order in favour of DSL with a condition that MSEDCL deposits a sum of Rs. 179 Crore in the Court and have to furnish a Bank Guarantee for the balance amount of Rs. 86 Crore (for interest).

9. MSEDCL further filed an appeal before the Hon'ble Supreme Court against the aforesaid Order of the Hon'ble High Court. The Hon'ble Supreme Court vide its Order dated May 15, 2009 directed MSEDCL to deposit Rs. 65 Crore and furnish a Bank Guarantee for the remaining Rs. 200 Crore on or before June 20, 2009. MSEDCL accepted the Hon'ble Supreme Court Judgement and deposited the required amount of Rs.65 Crore.

10. Further, MSEDCL requested the Commission to permit it to recover the liability arising out of the claim as per the Order of the Hon'ble Supreme Court.

11. Heard the Petitioner. Without expressing any opinion on the merits of the present matter, the Commission is of the view that reliefs for passing through such costs as prayed for cannot be taken up in the present proceedings as these are matters related to tariff. In the circumstances, the petition, as filed, stands dismissed as not maintainable.

(S.B.Kulkarni)  
Member

(V. P. Raja)  
Chairman



(Sanjay Sethi)  
Secretary, MERC