

## **RECORD OF PROCEEDINGS**

DATE OF HEARING : August 14, 2007 at 15.00 hrs

CASE No. : 18 of 2007

PETITIONERS : M/s. Balaji Electro Smelters Limited (“**BESL**”)

RESPONDENTS : Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”)

MATTER : Petition filed by BESL seeking clarifications on the aspect of implementation of Load Factor Formula, Incentives on ASC and Load Regulation on HT continuous and non-continuous industrial consumers, and suitable modifications in the Order dated May 18, 2007 in Case No. 65 of 2006

CORAM : Chairman, Member-Technical, Member-Finance

M/s. Balaji Electro Smelters Limited (“**BESL**”) filed a Petition on June 14, 2007 seeking clarifications on the aspect of implementation of Load Factor Formula, Incentives on ASC and Load Regulation on HT continuous and non-continuous industrial consumers, and suitable modifications in the Order dated May 18, 2007 in Case No. 65 of 2006. The Commission scheduled the hearing in the matter for August 14, 2007 in the presence of consumer representatives authorized on a standing basis under the Electricity Act, 2003 (“**EA 2003**”). Notices were issued accordingly.

2. At the hearing held in the matter on August 14, 2007, Shri. Ashok Parnandiwar, representative of BESL, submitted that BESL is a HT continuous process industry of MSEDCL. Referring to the Order dated January 10, 2006 in Case No. 35 of 2005 (in the matter of revision in the principles and protocol for load shedding by MSEDCL) and the subsequent Clarificatory Orders dated January 13, 2006 and February 21, 2006, under which orders inter alia, the reference period for consideration of reference consumption for calculation of load regulation targets was revised considering realistic trajectories of energy consumption by industrial consumers, it was submitted that in the exercise of revising the said reference period, the case of an industry which was closed on account of integral plant maintenance for consecutive months has escaped regulatory consideration. Shri. Parnandiwar referred to the proceedings initiated by BESL under Case No. 4 of 2006 on April 24, 2006 seeking, inter alia, modification of reference period on account of plant maintenance. It was submitted that prior to issuance of the Order in Case No. 4 of 2006 on October 30, 2006, an order was passed on October 20, 2006 in Case No. 54 of 2005 (in the matter of approval of MSEDCL’s ARR for FYs 2004-05, 2005-06 and 2006-07 and determination of tariff for FY 2006-07), wherein the concept of ASC was introduced. For determination of the reference period for implementation of ASC, it has

been provided under the said Order dated October 20, 2006 that *“In addition, in case of closure of any industrial unit for a period greater than one month during the period January 2005 to December 2005 for maintenance or other purposes, and documentary evidence of the same is provided to MSEDCL, then MSEDCL will exclude this period of closure, while computing the monthly average for the purposes of levy of Additional Supply Charges”*. Subsequently, the Order dated October 30, 2006 in Case No. 4 of 2006 was passed and reference was made to the Order dated October 20, 2006 in Case No. 54 of 2005. Shri. Parnandiwar submitted that a similar dispensation as provided under the Order dated October 20, 2006 in Case No. 54 of 2005, for determination of the reference period for computation of applicable ASC, has not been provided under the Order dated May 18, 2007 in Case No. 65 of 2006 (in the matter of determination of the ARR of MSEDCL for the Control Period from FY 2007-08 to FY 2009-10 and Tariff for FY 2007-08). The primary case of BESL under the present proceedings is that once a particular dispensation has been accepted as a principle for determination of a reference period in a tariff Order, the same should be continued to be operative in future tariff orders also.

3. Shri. Parnandiwar further submitted that the second relief as sought for under the present petition relates to the implementation of the incentives applicable vis-à-vis the implementation of ASC under the Order dated May 18, 2007 in Case No. 65 of 2006. It was submitted that contrary to the said Order incentives have not been provided to BESL.

4. Shri. Parnandiwar further submitted that under the Order dated May 18, 2007 in Case No. 65 of 2006, an industrial consumer becomes eligible for load factor incentive when its consumption reaches or exceeds 75% of the maximum possible consumption during a billing month. It has been submitted that the said benchmarking has been reduced from 85%, as was prevalent under the Order dated October 20, 2006 in Case No. 54 of 2005. It was further submitted that under the Order dated February 20, 2007 in Case No. 78 of 2006 (in the matter of MSEDCL’s proposal to increase the hours of planned load shedding across the State as a temporary emergency measure) continuous industries have been directed to restrict their monthly consumption to less than or equal to 90% of the average monthly consumption from January 2006 to December 2006, in MU terms. It was submitted that the said restriction bars optimal utilization of contract demand and further, the enjoyment of load factor incentive by 90%. A modification to the concept of planned load shedding vis-à-vis load factor incentive was sought in this regard.

5. Shri. Satish Shah, Business Combine Limited (“**BCL**”), served a copy of their intervention application to Smt. Deepa Chawan, Counsel present on behalf of MSEDCL. Shri. Satish Shah submitted that on and from October 2001 to April 2005, BCL was under lock-out and actual energy consumption resumed from March 2005. It was submitted that the consumption pattern of BCL on and from March 2005 was not normal. By the month of July 2006, the consumption pattern of BCL attained normality. It has prayed that suitable dispensation should be given to BCL and the reference period for calculation of ASC should be the last bill of BCL, as akin to the procedure adopted for new consumers, and as stipulated in the Order dated May 18, 2007 in Case No.65 of 2006. It was further submitted that a dispute has now risen between BCL and MSEDCL

on this issue as ASC is being calculated by MSEDCL without any consideration to the peculiar case of BCL and allowing a favourable dispensation to BCL in that regard. While referring to the prayers as specified under the intervention application filed on August 2, 2007, Shri. Shah submitted that the Commission should initiate appropriate measures in accordance with Section 142 of the EA 2003 for the continual erroneous billing undertaken by MSEDCL on BCL.

6. Smt. Deepa Chawan, Counsel for MSEDCL, submitted that the intervention application of BCL has been served upon MSEDCL at the very instance of the hearing and therefore, she would have to take appropriate instructions from MSEDCL in order to reply to the same. It was further submitted that MSEDCL has initiated appropriate proceedings seeking clarification of various provisions under the Order dated May 18, 2007. The issues as orally submitted by Shri. Shah have been addressed under the said proceedings, which is pending disposal. On an enquiry made by the Commission as to whether all the issues raised by BCL has been addressed under the said proceedings initiated by MSEDCL, Shri. Abhijit Deshpande, MSEDCL submitted that the issue raised by BCL with respect to lock-out has been addressed in the said proceedings. The Commission observed that since MSEDCL has preferred a Petition seeking clarification on the import of various issues connected to the immediate grievance of BCL, this is reflective of their lack of clarity on the Order dated May 18, 2007. This is further reflective of the lack of any culpable intent in the issuance of disputed bills, so far as invocation of Section 142 of the EA 2003 is concerned. It was further observed by the Commission that if it is subsequently observed by the Commission, that MSEDCL has erroneously overcharged BCL or any other consumer, MSEDCL shall be required to refund the same with interest.

7. So far as the contentions of BESL were concerned, Smt. Deepa Chawan submitted that all the said contentions save the one relating to load factor incentive, have been addressed under the said Petition of MSEDCL seeking clarification of various provisions under the Order dated May 18, 2007. On the issue of enjoyment of load factor incentive vis-à-vis planned load shedding, as raised by BESL under the present proceedings, Shri. Abhijit Deshpande submitted that load factor incentive was not determined during a shortage situation whereas planned load shedding has been determined subsequently, during the prevalence of an acute shortage of power. It is regretted that the load factor incentive has been to a large extent curtailed, on the implementation of planned load shedding.

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**List of Persons present at the hearing on August 14, 2007**

1. Shri. A.V. Treasurer, Laghu Udyog Bharati.
2. Shri. T.N. Agarwal, M/s. Business Combine Limited.
3. Shri. S.S. Shah, M/s. Business Combine Limited.
4. Smt. Deepa Chawan, Counsel for MSEDCL.
5. Shri. Abhijit Deshpande, SE (TRC), MSEDCL.
6. Shri. Ashok Parnandiwar, M/s. Balaji Electro Smelters Limited.
7. Shri. S.S. Kulhali, Chief Engineer-Eurotex Industries