

RECORD OF PROCEEDINGS

[Combined hearing of Case No. 57 of 2007 and Case No. 80 of 2007 on December 18, 2007 at 11.00 hrs]

(i) CASE No. 57 of 2007

PETITIONERS : Chamber of Marathwada Industries Association and Agriculture (“CMIAA”)

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

MATTER : Petition filed by CMIAA seeking (i) refund of Regulatory Liability Charge (“RLC”) @ 16%, together with carrying cost @18% per annum for three months and interest at 24% per annum for further period, or alternatively, adjustment of refund of RLC amounts in energy bills; and (ii) and appropriate action under Section 142 of the Electricity Act, 2003 (“EA 2003”) for violation of the Commission’s directions with regard to the refund of RLC

(ii) CASE No. 80 of 2007

PETITIONERS : M/s. Ispat Industries Limited (“IIL”)

RESPONDENTS : MSEDCL

MATTER : Petition filed by IIL seeking refund of Regulatory Liability Charge (“RLC”) @ 16%, together with carrying cost @24% per annum for September and October 2007 and interest at 18% per annum for further period, or alternatively, adjustment of refund of RLC amounts in energy bills

CORAM : Dr. Pramod Deo, Shri. A.V. Velayutham, Shri. S. B. Kulkarni

The Commission scheduled a combined hearing of the abovementioned matters on December 18, 2007 in the presence of four consumer representatives authorised on a standing basis under the EA 2003. Notices were issued accordingly.

2. At the combined hearing held in the matters on December 18, 2007, Shri. S.C. Karandikar, Advocate, appeared for CMIAA and Shri. Shaunak Thacker, Counsel, appeared for IIL. Shri. Ravi Prakash, Counsel, appeared for MSEDCL.

3. Shri. Shaunak Thacker filed a List of Dates to apprise the Commission on the facts of the case of IIL. Counsel referred to pages 55 and 162 of the Commission's Order dated May 18, 2007 passed in Case No. 65 of 2006 (in the matter of Determination of Annual Revenue Requirement of MSEDCL for the Control Period from FY 2007-08 to FY 2009-10 and Tariff for FY 2007-08) ("the MYT Order"), whereunder refund of RLC amounts have been directed. Counsel further referred to pages 2 and 22 of the Commission's Order dated August 24, 2007 passed in Case Nos. 26 of 2007 and 65 of 2006, which is a Clarificatory Order of the MYT Order. It was submitted that under the said Clarificatory Order, it has been stipulated that RLC should be refunded with retrospective effect, that is, from May 1, 2007. It was submitted that the MYT Order and the Clarificatory Order dated August 24, 2007, were in force and that no court has stayed the operation of the same. Thus, MSEDCL should be directed to refund amounts collected towards RLC, together with interest and carrying cost, and in case MSEDCL does not refund the RLC, appropriate punitive action should be taken against MSEDCL.

4. Shri. S.C. Karandikar submitted that MSEDCL should be directed to refund amounts collected towards RLC, together with interest and carrying cost. MSEDCL should not be allowed to take a stand that RLC is not being refunded due to paucity of funds. Refund of RLC is the legal right of consumers. It was further submitted that necessary action under Section 142 of the EA 2003 should be taken against MSEDCL in this regard, considering that the MYT Order was passed on May 18, 2007.

5. Shri. Ravi Prakash, at the outset, took an objection to the averment made under paragraph 3 of the affidavit of Shri. Munir Ahmad Abbasi, Deputy General Manager (Legal)-IIL. It was submitted that as per the said averment, no proceedings are pending before any court, tribunal or arbitrator or any other authority, wherein IIL is a party and wherein issues arising therefrom and/or reliefs sought thereunder, are similar or identical to issues and reliefs under the present petition (Case No. 80 of 2007). Counsel referred to an appeal filed by IIL numbered Appeal No. 75 of 2007 before the Hon'ble Appellate Tribunal for Electricity ("ATE"), which deals with the subject matter of RLC. It was submitted that the hearing of the said Appeal of IIL has been combined with the hearing of Appeal No. 109 of 2007 (which is a substantive appeal proceeding initiated by MSEDCL in the matter of RLC). It was submitted that the ATE has combined the proceedings under Appeal No. 75 of 2007 with the proceedings under Appeal No. 109 of 2007 only on the ground that Appeal No. 75 of 2007 deals with issues concerning with refund of RLC. It was also submitted that IIL has caused its appearance in the hearing of Appeal No. 75 of 2007 on several dates and this statement made on affidavit, as pointed out above, amounts to perjury.

6. On the issue pertaining to refund of RLC in terms of the MYT Order, Shri. Ravi Prakash submitted that various appeals are pending before the ATE with regard thereto. It was submitted that in each of the said appeals, the Commission has been impleaded as a party. Counsel submitted that MSEDCL filed a Review Petition against the

Commission's Clarificatory Order dated August 24, 2007 which detailed the modality of RLC refund, which was rejected by the Commission through its Order dated November 1, 2007 in Case No. 47 of 2007. Counsel further submitted that the appellate proceedings initiated by MSEDCL, being aggrieved by the Commission's Order on MSEDCL's Review Petition dated November 1, 2007 has been made within the statutory period of 45 days, as stipulated under Section 111 of the EA 2003, and the AFR is yet to be admitted. It was submitted that thus, the present complaints may not be proceeded with. The complaints ought to be disposed of based on the final decision of the ATE on the issue of refund of RLC.

7. The Commission observed that MSEDCL would be required to justify citing case laws as to how the operation of the MYT Order read with the Clarificatory Order dated August 24, 2007 may be kept on hold, on the basis that appeals have been filed therefrom. Also, no stay has been granted by the ATE. Shri. Prakash sought for a week's time to submit necessary case laws in this regard.

8. Shri. Karandikar submitted that under the Code of Civil Procedure, an order issued by a court cannot be considered to be inoperative simply because an appeal has been preferred therefrom. Mere filing of an appeal does not operate as stay. Shri. Thacker endorsed the submissions of Shri. Karandikar. With regard to the allegation of perjury as made by MSEDCL, Shri. Thacker submitted that Appeal No. 75 of 2007 was filed by IIL seeking an appropriate mechanism for payment of RLC amounts, in terms of the Commission's Order dated October 20, 2006. The said appeal has no connection with issues arising from the MYT Order or the Clarificatory Order dated August 24, 2007.

9. The Commission scheduled the matters for further hearing on December 27, 2007 at 11.00 hrs.

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List of Persons present at the combined hearing held on December 18, 2007

1. Shri. Ravi Prakash, Counsel for MSEDCL.
2. Shri. Abhishek Khare, Advocate for MSEDCL.
3. Shri S.C. Karandikar, Advocate for the Petitioner.
4. Shri. R.G. Sonawane, SE (TRC), MSEDCL.
5. Shri. R.G. Malame, EE (TRC), MSEDCL.
6. Shri. A.J. Despande, CE (Comm), MSEDCL.
7. Shri. Shaunak Thacker, Counsel for IIL
8. Shri. R. Balachandran, GM (CDD), IIL.
9. Shri. Sanjay Kumar, JM (CDD), IIL.
10. Shri. M.A. Abbasi, DGM (Legal), IIL.
11. Shri. M.A. Puran, DGM, IIL.
12. Shri. G. Srinivasa Rao, Addl. Manager, Reliance Energy Limited.
13. Shri. S.Y. Mulle, EE, JMMSNL.
14. Shri. S.D. Sabale, Adm, Officer, JMMSNL.
15. Shri. S.D. Korade, Rajarambapu Patil SSKL.