

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Dr. Pramod Deo, Chairperson**
2. **Shri R.Krishnamoorthy, Member**
3. **Shri S.Jayaraman, Member**

**Petition No. 131/2007
(Suo-motu)**

In the matter of

Default in payment of Unscheduled Interchanges (UI) for the energy drawn in excess of the drawl schedule.

And in the matter of

1. Uttar Pradesh Power Corporation Limited, Lucknow
2. Shri Awanish Awasthi, M.D. (formerly), UPPCL, Lucknow

...Respondents

The following were present:

1. Shri D. D. Chopra, Advocate
2. Shri Awanish Awasthy, M.D. (formerly), UPPCL

**ORDER
(Date of Hearing: 22.1.2009)**

This order disposes of the notice issued to the second respondent under section 149 of the Electricity Act, 2003 (hereinafter "the Act").

2. The basic facts are that the first respondent had defaulted in making timely payments of UI charges as a result of which principal amount of Rs. 767 crore became outstanding, as on 31.3.2008. The first respondent, by order dated 11.4.2008, was directed to liquidate the entire amount in six equal monthly instalments by paying Rs. 128 crore every month, starting from May 2008, in addition to timely payment of current UI dues, if any, as per weekly UI charges

statements issued by NRPC Secretariat. The first respondent filed a writ petition before the Lucknow Bench of the Hon`ble Allahabad High Court who after accepting the undertaking given by the first respondent to make deposits of the amount of arrears in twelve equal monthly instalments, with timely payment of current UI dues @ Rs. 7.45 per unit, by its interim order dated 2.5.2008, directed that the amount be paid as per time schedule undertaken, failing which action as per law could be taken. Accordingly, by a fresh order dated 29.5.2008, the Commission revised the time-schedule and directed the first respondent to take necessary action to liquidate the principal amount of UI arrears in twelve monthly instalments of Rs. 64 crore each, starting from May 2008 in addition to timely payment of current UI dues.

3. It was brought to the Commission's notice that the first respondent paid an amount of Rs. 115.54 crore against the total sum of Rs. 178.81 crore, payable during the month of October 2008, leaving an unpaid balance of Rs. 63.27 crore. Therefore, proceedings under section 142 of the Act were initiated against the first respondent vide order dated 19.11.2008. Subsequently, show cause notice under section 149 of the Act was issued to the second respondent by order dated 24.11.2008,

4. On careful consideration of the matter and the cause shown by the first respondent, it was established that the first respondent had not complied with the directions of the Commission. As a consequence, by order dated 26.12.2008 penalty of Rs. one lakh was imposed on the first respondent for its failure to comply with the Commission's directions, the basis for which was its own

undertaking given before the Hon'ble High Court. The amount of penalty has been deposited by the first respondent and matter stands settled *qua* the first respondent so far as its default for the month of October 2008 is concerned. However, the second respondent was afforded a fresh opportunity to explain his position.

5. The second respondent in his reply affidavit dated 19.1.2009 has explained that he made efforts to obtain loan from the banks and the financial institutions. However, it is explained, because of general slowdown and recession in the economy, fresh loans could not be arranged, as a result of which, the financial position of the first respondent took a severe beating. He has explained that the first respondent could not liquidate/ pay the UI dues during the month of October 2008 because of financial stringency being faced by the first respondent. According to the affidavit, the second respondent issued directions for strict adherence to the schedule. This, according to the second respondent, resulted in UI gains to the first respondent. Meanwhile, the second respondent has been transferred to a new assignment. The second respondent feels that he took all the measures available to him to ensure payment of UI dues. He has however rendered an unconditional apology.

6. The second respondent along with the D.D. Chopra, Advocate, appeared before the Commission. The second respondent reiterated the position stated in the affidavit filed by him. He again tendered his unqualified apology.

7. Now we consider the matter in relation to the second respondent who was issued notice under section 149 of the Act. Sub-section (1) of section 149

provides that in case of an offence by a company, every person who at the time of commission of offence was in charge of and was responsible to the company for the conduct of its business, as well as the company, is deemed to be guilty of having committed the offence and is liable to be proceeded against and punished accordingly. Proviso to sub-section (1) carves out an exception to the effect that the person concerned shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence.

8. We have considered the submissions made by 2nd Respondent vide his affidavit dated 19.1.2009.

9. The first respondent was found guilty of non-compliance of the directions of the Commission regarding settlement of arrears of UI charges, payable in terms of the order made by the Hon'ble High Court and adopted by the Commission. A penalty of rupees one lakh imposed on the first respondent has been deposited. The second respondent as the Managing Director was expected to make necessary arrangements to meet the commitment made. However, as noted above, there was default in making timely payments of the dues and settlement of UI accounts. This could not have happened without the approval or at least knowledge of the second respondent. In our considered opinion, failure of the first respondent to get funding from the banks or the financial institutions cannot be a justifiable reason for not honouring the commitments made. Therefore, we are not satisfied with the explanation submitted by the second respondent. We feel

that adequate steps were not taken by him to guarantee payment of UI dues during the month of October 2008 and thereby ensuring compliance of the Commission's directions. Therefore, the second respondent is deemed to be guilty of non-compliance of the Commission's directions. We also take note of the fact that the second respondent has since been moved out of the position of Managing Director of the first respondent. In view of the peculiar circumstances under which the second respondent was working, as a special case, we do not propose to impose penalty in terms of Section 149 of the Act. We make it clear that the view taken in this case shall not be cited as a precedent for deciding future cases. Copy of the order be sent to the second respondent through the present Managing Director of the first respondent.

10. With this the proceedings stand concluded.

Sd/-

(S.JAYARAMAN)
MEMBER

Sd/-

(R.KRISHNAMOORTHY)
MEMBER

Sd/-

(DR.PRAMOD DEO)
CHAIRPERSON

New Delhi, dated the 12th February 2009