

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 112/MP/2014

Subject : Petition under section 79 (1) (c) read with section 142 of the Electricity Act, 2003 for compliance of the order dated 8.6.2013 in Petition No. 245/MP/2012.

Date of hearing : 15.7.2014

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member

Petitioner : Dakshin Gujarat Vij Company Limited

Respondents : Essar Steel India Limited
Western Regional Load Despatch Centre

Parties present : Shri M.G. Ramachandran, Advocate, DGVCL
Shri Anushree Bardhan, Advocate, DGVCL
Shri Anand K Ganesan, Advocate, DGVCL
Shri Gopal Jain, Senior Advocate, ESL
Ms. Neeha, Nagpal, Advocate, ESL

Record of Proceedings

Learned counsel for the petitioner submitted as under:

(a) The present petition has been filed under Section 142 of the Electricity Act, 2003 for non-compliance of the Commission's order dated 8.6.2013 in Petition No. 245/MP/2012 by Essar Steel Limited (ESL).

(b) The Commission in its said order dated 8.6.2013 held that Essar Steel Limited is liable to pay the cross subsidy surcharge since June 2013 after disconnection from STU and having been connected to CTU network. However, ESL is not making payments. The said order is a conditional order and ESL cannot continue to enjoy the open access without complying with the conditions mentioned in the order.

(c) ESL has filed an appeal before Hon`ble High Court of Gujarat praying for non-cancellation of open access which is pending adjudication.

(d) The petitioner vide its letters dated 5.4.2014 and 22.4.2014 requested WRLDC to withdraw open access permission granted to ESL. However, WRLDC directed ESL to take necessary steps for early settlement of issues as per the Commission's order dated 8.6.2013.

(e) Learned counsel requested the Commission to direct ESL to immediately pay the outstanding amount of the cross subsidy surcharge of ₹ 107.65 crore as on 30.4.2014 and to direct WRLDC to get consent of petitioner before issuing NOC for open access to ESL and in the event of non-payment, the petitioner would have the right to withdraw the open access permission granted to ESL.

2. In reply to the query of the Commission as to whether ESL has raised any dispute with regard to the amount of cross subsidy surcharge, learned counsel for the petitioner submitted that ESL claims that it has become a captive power plant and is therefore not liable to pay cross subsidy surcharge. Learned counsel for the petitioner submitted that if ESL is a captive power plant, it should have approached the Gujarat Electricity Regulatory Commission and sought exemption from cross subsidy surcharge under the Electricity Act, 2003.

3. Learned senior counsel for ESL submitted that the present petition is not maintainable under Section 142 of the Electricity Act, 2003, since, the Commission in its order dated 8.6.2013 had not directed to pay cross subsidy surcharge. Learned senior counsel submitted that the Commission vide its order dated 8.6.2013 had observed that since the issue of cross subsidy surcharge falls within the jurisdiction of the Gujarat Electricity Regulatory Commission, the parties may approach the said Commission with regard to cross subsidy surcharge. Learned senior counsel for ESL further requested for two weeks time to file preliminary reply, copy of proceedings before High Court of Gujarat and copy of the Gujarat Electricity Regulatory Commission's order dated 30.6.2014. The request made by learned senior counsel for ESL was allowed by the Commission.

4. In response to the Commission's query regarding the directions of High Court of Gujarat, if any, learned counsel for ESL submitted that High Court has directed the respondents not to take any coercive action with regard to open access, pending disposal of the writ petition.

5. After hearing the learned counsel for the petitioner and learned senior counsel for ESL, the Commission directed to issue notice to the respondents.

6. The Commission directed the petitioner to serve copy of the petition on the respondents. The respondents were directed to file their replies on affidavit by

28.7.2014 with an advance copy to the petitioner, who may file its rejoinder, if any, by 14.8.2014.

7. The Commission further directed ESL to file copy of proceedings before High Court of Gujarat and copy of the Gujarat Electricity Regulatory Commission`s order dated 30.6.2014 by 28.7.2014. The Commission directed that the due dates for filing the replies and rejoinders should be strictly complied with.

8. The petition shall be listed for hearing on 21.8.2014.

By order of the Commission

Sd/-
(T. Rout)
Chief (Law)