

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Dr. Pramod Deo, Chairperson**
2. **Shri Bhanu Bhushan, Member**
3. **Shri R.Krishnamoorthy, Member**
4. **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., UPPCL, Lucknow
- ...Respondents**

The following were present:

1. Shri D. D. Chopra, Advocate for the respondents
2. Shri Somara Lakra, NRLDC

**ORDER
(Date of Hearing: 4.12.2008)**

Based on a report from Northern Regional Load Despatch Centre (hereinafter 'NRLDC') that principal amount of Rs. 767 crore was outstanding against Uttar Pradesh Power Corporation Ltd (the first respondent) as arrears of UI charges up to 31.3.2008, the Commission, by its order dated 11.4.2008 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 UI dues, if any, as per weekly UI charges statements issued by NRPC Secretariat. The first respondent filed Writ Petition No. 3014/2007 before the Lucknow Bench of the Hon`ble Allahabad High Court, seeking stay on operation of the Commission's order dated 11.4.2008. The Hon`ble High Court in its order

dated 2.5.2008, after an undertaking 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, directed that the amount, as per time schedule undertaken, be deposited, failing which action as per law could be taken. In the light of the order dated 2.5.2008 of the Hon`ble High Court, the Commission revised the time-schedule given in its order dated 11.4.2008 and, by a fresh order dated 29.5.2008 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. The first respondent was allowed a flexibility to make payments on different dates within the same month in instalments with the condition that the amount of at least Rs.64 crore per month was paid before the last day of the particular month. The first respondent was further directed to make timely payments of current UI dues, if any, as per weekly UI statement issued by NRPC Secretariat.

2. NRLDC, in its status report dated 3.11.2008 submitted to the Commission, informed that the first respondent was to pay a sum of Rs. 178.81 crore, including Rs. 64 crore towards arrears in terms of the Commission's order dated 29.5.2008, and Rs. 114.81 crore towards current UI charges, during the month of October 2008. Against above dues, the first respondent was stated to have paid only Rs. 115.54 crore on various dates in October 2008, leaving an unpaid balance of Rs. 63.27 crore.

3. From the report of NRLDC, it was thus found that the first respondent had not fully complied with the directions in the Commission's order dated 2.5.2008.

4. Therefore, proceedings under Section 142 of the Electricity Act, 2003 (the Act) were initiated against the first respondent vide order dated 19.11.2008. Subsequently, on 24.11.2008, show cause notice under Section 149 of the Act was issued to the second respondent, Shri Awanish Awasthi, Managing Director of the first respondent.

5. When this matter was heard on 4.12.2008, Shri D.D.Chopra, Advocate, appeared for the respondents, and informed that the Hon'ble High Court had directed that the payments could be made on or before 7.1.2009, in which case, non- payment (delayed payment) would not be treated as default.

6. The first respondent has since forwarded a copy of the order dated 2.12.2008 made by the Hon'ble High Court wherein it has been directed as under:

“.....a direction is issued that so far the amount, which is to be deposited by the petitioner in the month of November and December, that can be deposited either in lump sum or as a whole by 7.1.09.

In case the aforesaid amount is deposited by 7.1.09, it would not be taken as a default, within the meaning of the interim order passed by us.”

7. It is to be noted that the order made by the Hon'ble High Court does not relate to the proceedings initiated by the Commission vide its orders dated 19.11.2008 and 24.11.2008 under Sections 142 and 149 of the Act, on account of default in making payments during the month of October 2008. The order relaxes the time schedule for the amounts payable during the months of November and December 2008. For sake of record, we may point out that at the hearing held on 4.12.2008, the Commission was not properly informed inasmuch

as the Hon'ble High Court had not made any observation as regards payments due for the month of October 2008, the month to which the proceedings concerned.

8. On careful consideration of the order made by the Hon'ble High Court, we now proceed to consider the matter on merits through this composite order. The respondents have filed the replies to the show cause notices. In the replies, which are identically worded, the respondents have stated that the first respondent is facing acute financial hardship. It has been stated that despite the financial crisis being faced, the first respondent had been making efforts to honour the commitments made. The respondents have further stated that the first respondent has made full payment of the outstanding current bills of UI payable during October 2008 on 13.11.2008 (Rs.220008025.00) and 26.11.2008 (Rs.595645616.00).

9. From the facts placed on record by the first respondent, the inescapable conclusion is that full payments on account of UI charges due during the month of October 2008, in terms of the Commission's order dated 29.5.2008, were not made till 31.10.2008. The extenuating factors regarding the financial hardship relied upon are not tenable. The first respondent as a public sector commercial entity is expected to manage its affairs in a reasonable manner so that the solemn commitments made are fully honoured. It needs no emphasis that a party must remain bound by its commitments and promises. A party cannot be permitted to renege from its promises, since otherwise it amounts to interference with, and circumvention of, administration of justice. The amounts payable by the

first respondent belong to other utilities in the Region, who have been deprived their lawful share of electricity for which they have already made payments. The monetary compensation is their sole consolation.

10. Under these circumstances, it is established that the first respondent has not complied with the directions of the Commission. We are of the opinion that the first respondent is liable to penalty of Rs. one lakh 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. It is directed accordingly.

11. Next 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, are 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. There is not even a whisper in the reply filed by the second respondent that the offence committed by the first respondent was not within his knowledge or that any steps were taken by him to ensure compliance of the Commission's directions. However, before the Commission gives its decision as regards the culpability or otherwise of the second respondent, an opportunity of personal hearing is

considered appropriate. Accordingly, list on 22.1.2009 for personal hearing of the second respondent.

12. In the mean time, the penalty imposed on the first respondent shall be deposited latest by 15.1.2009.

Sd/-
(S.JAYARAMAN)
MEMBER

Sd/-
(R.KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(DR.PRAMOD DEO)
CHAIRPERSON

New Delhi dated the 26th December 2008