

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 151/MP/2016

Subject : Petition under Section 79 (1) (c) read with Sections 142 and 146 of the Electricity Act, 2003 regarding non-compliance of order dated 8.6.2013 in Petition No. 245/MP/2012.

Date of hearing : 8.12.2016

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Dakshin Gujarat Vij Company Limited.

Respondents : Essar Steel India Limited and Others

Parties present : Shri M. G. Ramachandran, Advocate, DGVCL
Ms. Ranjeetha Ramachandran, Advocate, DGVCL
Ms. Anushree Bardhan, Advocate, DGVCL
Shri B.C. Godhani, DGVCL
Shri C. S. Vaidyanathan, Senior Advocate, ESIL
Shri Himanshu, Advocate, ESIL
Shri Vikrant, Advocate, ESIL

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed for seeking direction to Essar Steel India Ltd. to pay cross subsidy surcharge in terms of the Commission's order dated 8.6.2013 in Petition No. 245/MP/2012. Learned counsel for the petitioner further submitted that as per the Commission's order dated 8.6.2013, Essar Steel is liable to pay applicable cross subsidy charges including surcharge and other charges which are not being paid by Essar Steel. Learned counsel for the petitioner submitted as under:

(a) Essar Steel has filed the Petition No. 1420 of 2014 before Gujarat Electricity Regulation Commission (GERC) seeking exemption from cross subsidy surcharge. GERC vide its interim order dated 8.8.2016 has specifically clarified that there is no interim order operating as claimed by Essar Steel and granted liberty to the petitioner to take action as necessary for recovery of the cross subsidy surcharge.

(b) The Commission vide order dated 8.6.2016 in Petition No. 216/MP/2015 held that Essar Steel would be required to pay the cross subsidy charges determined by the State Commission. The Commission also took on record the undertaking of Essar Steel to pay the cross subsidy surcharge as applicable.

(c) The petitioner vide its letters dated 5.4.2014 and 22.4.2014 requested WRLDC to cancel the open access in view of the non-payment of cross subsidy surcharge by Essar Steel. WRLDC vide its letter dated 10.4.2014, directed Essar Steel to pay the due on account of cross subsidy charge. However, WRLDC, subsequently, vide its letter dated 1.5.2014 taken the position that unless there is express order of the Commission, the open access cannot be disturbed.

(d) Essar Steel vide its letter dated 11.4.2014 misled WRLDC by stating that it is paying cross subsidy surcharge (with some delay) and further undertook that all dues towards cross subsidy charges would be paid.

(e) Essar Steel is liable to pay cross subsidy surcharge, irrespective of whether it is connected to the intra-State transmission system of STU or the distribution system of the petitioner. The Hon`ble Supreme Court in its judgment in **SesaSterlite Limited Vs. Odisha Electricity Regulatory Commission (2014) 8 SCC 444** has held that the cross subsidy surcharge is payable irrespective of whether the intra-State system is used or not, if the consumer is situated in the areas of distribution licensee. In the present case, since Essar Steel is situated in the areas of the petitioner and drawing power, it is liable to pay cross subsidy surcharge.

(f) In support of its contention, learned counsel for the petitioner relied upon in the cases of **State of U.P. and others V. Maharaja Sharmander Prasad Singh [(1989) 2 SCC 505]** and **City of Nagpur Corporation Nagpur V. Indian Gymkahan Nagpur [(2010) 1 Bom. CR]**.

2. Learned senior counsel for Essar Steel submitted that the present petition is not maintainable as there is no conclusive determination of the payment of cross subsidy charges by Essar Steel. Learned senior counsel further submitted as under:

(a) The Commission vide order dated 6.7.2016 in Petition No. 216/2015 directed Essar Steel to raise the issue of applicability of levy of cross subsidy charges in relation to power procured from non-captive sources before GERC. Therefore, Essar Steel filed Petition No. 1601 of 2016 before GERC which is still pending.

(b) There is no direction in the order dated 8.6.2013 to Essar Steel to pay cross subsidy charges. The order dated 8.6.2013 only states that cross subsidy charges if any applicable under the Electricity Act, 2003 and the regulations shall be payable.

(c) Since, cross subsidy charges are not applicable and payable by Essar Steel, it has filed Petition Nos. 1420 of 2014 and 1601 of 2016 before the GERC challenging the levy of cross subsidy charges on it.

(d) The petitioner is seeking to recover the amount which is still under dispute. The issue of payment of cross subsidy charges is to be decided by the appropriate Commission which is the State Commission.

3. The Commission observed that the petitions filed before GERC are required to be examined in order to take a view whether the petition is maintainable before the Commission or not.

4. Learned counsel for the petitioner submitted that he would place on record the complete pleading in both the petitions filed by the respondent before GERC. Learned counsel was permitted to place on record the said documents by 23.12.2016.

5. The Commission directed the learned counsel for the petitioner and learned senior counsel for the respondent to file written submissions regarding maintainability of the petition before this Commission by 30.12.2016. The Commission directed that due date of filing the documents and written submissions should be strictly complied with. No extension shall be granted on that account.

6. The petition shall be listed for hearing if required.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Legal)**