

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 186/MP/2021**

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

Date of Hearing : 26.5.2022

Coram : Shri I.S. Jha, Member  
Shri Arun Goyal, Member  
Shri P.K. Singh, Member

Petitioner : Dakshin Gujarat Vij Company Limited (DGVCL)

Respondents : Arcelor Mittal Nippon Steel India Limited (AMNSIL) & Ors.

Parties Present : Shri M.G. Ramachandran, Senior Advocate, DGVCL  
Shri Ramji Srinivasan, Senior Advocate, AMNSIL  
Shri Anand K. Ganesan, Advocate, DGVCL  
Ms. Swapna Seshadri, Advocate, DGVCL  
Ms. Harsha Manav, Advocate, DGVCL  
Ms. Srishti Khindaria, Advocate, DGVCL  
Ms. Ruby Singh Ahuja, Advocate, AMNSIL  
Shri Vishal Gehrana, Advocate, AMNSIL  
Ms. Kritika Sachdeva, Advocate, AMNSIL  
Shri Ashutosh P Shukla, Advocate, AMNSIL  
Shri Varun, Advocate, AMNSIL  
Shri B.K. Patel, DGVCL  
Ms. S. Usha, WRLDC  
Shri Aditya Prasad Das, WRLDC  
Shri Gajendra Sinh Vasava, WRLDC  
Shri Partha Sarathi Das, CTUIL  
Shri Bhaskar Laxmanrao Wagh, CTUIL  
Shri Pratyush Singh, CTUIL  
Shri Swapnil Verma, CTUIL  
Shri Siddharth Sharma, CTUIL  
Shri Ranjeet Singh Rajput, CTUIL  
Ms. Muskan Agarwal, CTUIL

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking directions on the deliberate continued violation by the Respondent No.1, Arcelor Mittal Nippon Steel India Limited of the order dated

8.6.2013 passed by the Commission in Petition No. 245/MP/2012. Learned senior counsel mainly submitted the following:

(a) The Respondent No.1 has failed to make payment of Cross Subsidy Surcharge ('CSS') for the period post 16.12.2019 (i.e. vesting of undertaking of Essar Steel India Limited in the Respondent No.1 pursuant to culmination of resolution process under IBC, 2016) which was a condition subject to which this Commission in the order dated 8.6.2013 in Petition No. 245/MP/2012 granted the Respondent No.1 the facility of direct connectivity to the network of Central Transmission Utility of India Limited, the regional entity status and the ability to have open access directly on the inter-State transmission line for sourcing electricity from third party source.

(b) During the proceedings in Petition No. 245/MP/2012, the Gujarat Utilities, including the Petitioner, had taken, among others, the specific issue of the liability of Respondent No.1 to pay the CSS and the Respondent No. 1 vide its rejoinder dated 22.2.2013 had confirmed to pay the CSS and other related charges to Discom in terms of the applicable rules and regulations. The Commission in order dated 8.6.2013 had specifically taken note of submissions of the parties including the Respondent No.1 on its liability to pay applicable CSS including surcharge and other charges under the provisions of the Act. No appeal has been filed against the said order by the Respondent No.1, which accepted the said order and took advantage of the same by getting connectivity to ISTS and the status of regional entity.

(c) The Respondent No.1 duly paid the CSS to Respondent No.1 on the quantum of electricity sourced by it through open access during the period from April, 2013 to April, 2015 without any reservation or condition. The liability to make payment of CSS has also been admitted by the Respondent No.1 in its various letters. However, thereafter there has been default on the part of the Respondent No.1 in making payment of CSS to the Petitioner.

(d) The Respondent No.1 has filed Petition No. 1420 of 2014 before the Gujarat Electricity Regulatory Commission ('GERC') on the payment of CSS wherein it has raised the issue that the electricity sourced by Respondent No.1 from Essar Mahan should be treated as captive use of electricity and therefore, exempted from CSS. In the said Petition, GERC vide order dated 8.8.2016 in IA No. 3/2014 filed by the Petitioner therein has specifically stated that there is no interim order operating and granted liberty to the Petitioner to take action as necessary for recovery of CSS amount due and payable from the Respondent No.1.

(e) The Respondent had also filed Petition No. 216/MP/2015 before this Commission seeking relief against the payment CSS wherein its sought to agitate the issue of CSS even on the supplies sourced from third parties. In the said Petition, the Commission rejected the interim stay sought for by the Respondent No.1. Subsequently, the Commission vide order dated 6.7.2016 rejected the said Petition as not maintainable and condemned the approach of the Respondent No. 1 as abuse of process of law.

(f) Subsequently, the Respondent No.1 has filed Petition No. 1601 of 2016 before GERC claiming that CSS is not payable by the Respondent No.1. However, there is no interim order by GERC in favour of the Respondent No.1 and it continues to be liable to pay the CSS.

(g) As the Respondent No.1 had not been paying CSS for supply of power through open access from third party sources, apparently based on the pretext of the Petition pending before GERC and given that GERC had expressly clarified its position and that this Commission had rejected the Petition No. 216/MP/2015 filed by Respondent No. 1, the Petitioner had preferred the Petition No. 151/MP/2016 before this Commission for non-compliance of the specific stipulation as contained in the order dated 8.6.2013 by the Respondent No.1 and had also sought the recall of the permission granted in the said order. The Commission vide order dated 6.11.2018 while accepting the contention of the Respondent No.1 in regard to pendency of proceeding against Essar Steel India Ltd. before the NCLT and the moratorium under Section 14 of the IBC, 2016, reiterated the earlier finding in its orders dated 8.6.2013 and dated 6.7.2016.

(h) There is no moratorium at present in regard to the Respondent No.1. However, the Respondent No.1 has not made the payment of CSS even for the period post 16.12.2019, which is not in any manner affected by the proceedings under the IBC.

(i) Accordingly, the Petitioner has, *inter alia*, prayed to recall the permission granted in order dated 8.6.2013 passed in Petition No. 245/MP/2012 granting connectivity to ISTS network of CTUIL for the premises of the Respondent No.1 and also the regional entity status to the Respondent No.1 on account of violation on the part of Respondent No.1, etc.

3. Learned senior counsel for the Respondent No.1 mainly submitted as under:

(a) This Commission vide order dated 8.6.2013 in Petition No. 245/MP/2012 permitted the Essar Steel a connectivity facility to ISTS network and granted a regional entity status subject to certain stipulations including that it shall remain liable to pay applicable CSS including surcharge and other charges, if any, applicable under the provisions of the Act and as per the provision of the regulations of the State Commission.

(b) Subsequently, a controversy arose with regard to liability of the Respondent No.1 to pay the CSS under the provisions of the Act and the applicable regulations and in this context, the Petitions bearing Nos. 1420/2014 and 1601/2016 came to be filed before the GERC, which are presently pending.

(c) The Respondent No. 1 had also approached this Commission in Petition No. 216/MP/2015 in regard to levy of CSS on the Respondent No.1 wherein the Commission vide its order dated 6.7.2016 observed that the dispute raised by the Respondent No.1 falls within the jurisdiction of GERC.

(d) The Petitioner herein had also moved IA No. 1510 of 2021 in an Appeal No. 13 of 2021 filed by the Respondent No.1 against this Commission's order dated 6.11.2018 in Petition No. 151/MP/2016, seeking leave of APTEL to file and pursue the present Petition. The said IA was later withdrawn by the Petitioner submitting that the Petition has already been filed before this Commission which it intends to pursue. However, APTEL in its order dated 2.11.2021 did not express any opinion as to the maintainability of such Petition before this Commission.

(e) Despite the issue of levy of CSS on the Respondent No.1 being pending before the GERC, the Petitioner has sought to invoke the Section 142 of the Act

in the present case as if there is finding to the effect that Respondent No.1 has deliberately failed to pay the CSS.

(f) Section 142 of the Act applies only in the case where there is a flagrant wilful violation or default in compliance of the rules, regulations or any direction(s) issued by the Commission thereunder.

(g) Essar Steel had raised the issue of liability of CSS including the quantum of CSS in the aforementioned Petitions before the GERC even prior to the initiation of the insolvency proceeding and it is not the case that the Respondent No.1 stopped making payment of CSS after the vesting of Essar Steel in the Respondent Company pursuant to resolution process under the IBC.

(h) In view of the above, the present Petition may not be admitted and both the parties may be advised to jointly approach GERC for expeditious hearing of the matters already pending.

4. In rebuttal, the learned senior counsel for the Petitioner referred to the Commission's order dated 6.11.2018 in Petition No. 151/MP/2016 and submitted that the similar objections raised by the Respondent No.1 had already been rejected by this Commission therein. The learned senior counsel further submitted that the present Petition does not only seek invocation of Section 142 of the Act but also the recall of the Commission's order dated 8.6.2013 in Petition No. 245/MP/2012 for the continued violation of the conditions stipulated therein.

5. After hearing the learned senior counsel for the Petitioner and the Respondent No.1, the Commission directed the Respondent No.1 to file its written submission on the aspect of maintainability of the Petition within a week with copy to the Petitioner, who may file its written submissions with two weeks thereafter.

6. Subject to the above, the Commission reserved the order on the 'maintainability' of the Petition.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Joint Chief (Law)**