

**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 passed by the Commission and for consequential directions.
- Date of Hearing : **21.8.2023**
- Coram : Shri Jishnu Barua, Chairperson
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) and 4 Ors.
- Parties Present : Shri M.G. Ramachandran, Senior Advocate, DGVCL
Shri Gopal Jain, Senior Advocate, AMNSIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Ms. Muskan Agarwal, CTUIL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed for the non-compliance of the Commission's order dated 8.6.2013 in Petition No. 245/MP/2012 by the Respondent No.1, AMNSIL and for the consequential direction thereof. Learned senior counsel briefly captured the background of the matter and mainly submitted it as under:

- (a) The Commission, vide order dated 8.6.2013 in Petition No. 245/MP/2012, allowed the Respondent No.1 connectivity to the inter-State transmission network on the specific condition that it shall pay the Cross-Subsidy Surcharge (CSS) and other surcharges. The said order giving connectivity and status as a regional entity to the Respondent No.1 was based on the specific undertaking by the Respondent No.1 that it would duly abide by the same.
- (b) Thereafter, the Respondent No.1 continued to pay CSS for some time (April 2014 - April 2015) without any reservation or condition. However, subsequently, there has been a continuous default on the part of the Respondent No.1 in making payment of CSS to the Petitioner.
- (c) The Respondent No.1 also proceeded to file a Petition No. 1420 of 2014 challenging the applicability of CSS on the procurement of power from Essar Mahan on the ground of it being captive consumption and a Petition No. 1601 of 2016 before the Gujarat Electricity Regulatory Commission (GERC) disputing its liability of CSS on the ground of it being connected to the CTU network and not to STU and the Petitioner's network. Despite there being no stay in these proceedings, the Respondent No.1 continued to default on its liability to pay the CSS.

(d) The Petitioner had also filed a Petition No. 151/MP/2016 before the Commission for the non-compliance of its order dated 8.6.2013 by Respondent No.1. The Commission, vide its order dated 6.11.2018, while accepting the contention of the Respondent No.1 in regard to the pendency of proceedings against Essar Steel India Limited before the NCLT, Ahmedabad, and the moratorium under Section 14 of the IBC, 2016, reiterated the earlier findings that the Respondent No.1 is liable to pay CSS to the Petitioner.

(e) Moreover, both the Petitions filed by the Respondent No.1 before the GERC were dismissed recently. GERC vide its order dated 10.7.2023 dismissed the Petition No. 1601/016 and upheld the liability of the Respondent No.1 to pay CSS to the Petitioner. Whereas in the Petition No. 1420 of 2014, the GERC, vide its order dated 10.7.2023, had permitted the Respondent No.1 to approach the Chief Electrical Inspector (CEI) within 30 days with all the relevant documents and details to obtain captive status for the period post 29.7.2017 till the date of the order, failing which it was held liable to pay the CSS to the Petitioner. The given period has already expired, and the Respondent No.1 having failed to obtain any such certification of CEI, is liable to pay the CSS for the power procured by it from Essar MP as well.

(f) In view of the above, there cannot be any dispute with regard to the liability of the Respondent No.1 to pay the CSS to the Petitioner for the period post 16.12.2019, namely, after vesting of Essar Steel India Limited in AMNSIL, pursuant to the culmination of the resolution process under IBC, 2016. However, AMNSIL has continued to default on its liability to make payment towards CSS. Accordingly, the Commission may recall the permission granted in its order dated 8.6.2013 allowing the Respondent No. 1 to connect with ISTS.

2. Learned senior counsel for the Respondent No.1, AMNISL mainly submitted as under:

(a) The Commission's order dated 6.11.2016, in Petition No. 151/MP/2016, wherein the Commission has held that the Respondent is liable to pay CSS, has been challenged by the Respondent before the APTEL in Appeal No. 13 of 2021, including on the ground of jurisdiction. Although there is no stay on the said order, the filing of an appeal including on the primary ground of jurisdiction put the said order in 'jeopardy'.

(b) Insofar as the orders of GERC dated 10.7.2023 in Petition Nos. 1420 of 2014 and 1601 of 2016 are concerned, the Petitioner cannot seek the execution of the said orders before this Commission. In any case, the Respondent has already preferred the Review Petition against the said order(s), which are likely to be taken-up shortly, and the hearing in the present Petition may be deferred for some time.

(c) Pursuant to the aforesaid orders of the GERC, the Respondent has already paid the CSS for the month of July, 2023 and will continue to pay on an ongoing basis while it pursues the legal remedies available to it.

(d) As regards its CSS liability for the period prior to December 2019, the same stands extinguished in terms of the catena of judgments of the Hon'ble Supreme Court, including Ghanshyam Mishra & Sons (P) td. V. Edelweiss Asset Reconstruction Co. Ltd. [(2021) 9 SCC 657].

(e) Since the substantial issues are still pending consideration before the APTEL and the GERC in appeals and/or review petitions and the Respondent has already started to pay its current CSS dues (July, 2023 onwards), the Commission may defer the hearing of the present case.

3. After hearing the learned senior counsel for the Petitioner and the Respondent No.1, the Commission *prima facie* observed that despite there being no stay on its liability for CSS in any of the proceedings initiated by the Respondent No.1, it has continued to default in making payment of CSS, even for the period post 16.12.2019, i.e. culmination of the resolution process under the IBC, 2016 and vesting of Essar Steel India Limited in AMNSIL. At the same time, the Respondent No.1, AMNSIL (formerly, ESIL) has continued to enjoy the benefits of the Commission's order dated 8.6.2013 in Petition No. 245/MP/2012 in terms of connectivity to ISTS and status as a regional entity all along. The Commission also expressed the view that it would be extremely unfair that the Respondent No.1 continues to enjoy the benefits arising out of the Commission's order dated 8.6.2013 while not discharging its liabilities towards CSS on the pretext of pending litigations, especially when in none of these litigations neither the applicability of CSS nor the obligation of making payment have been stayed by any of the authorities. However, keeping in view the specific undertaking of the Respondent No.1 that pursuant to the GERC's recent orders, it has already made the payment towards CSS dues for the month of July, 2023 and, going forward, will continue to pay the current CSS dues, the Commission accepted the request of the Respondent No.1 to defer the hearing of the matter for six weeks, subject to the Respondent No.1 filing a payment plan to liquidate its CSS arrears for the period post 16.12.2019 on an affidavit. The Commission also clarified that the above observations/directions are in no way to be construed as enforcement of the GERC's orders and are only limited to its order dated 8.6.2013 in Petition No. 245/MP/2012. whereby the Respondent No.1 was allowed a special dispensation of connectivity to ISTS and the grant of regional status.

4. Accordingly, the Respondent No.1, was directed to file its affidavit within four weeks indicating the payment plan to liquidate its CSS arrears for the period post 16.12.2019 and undertaking to the effect that the Respondent No. 1 would continue to pay the current CSS dues and the Petitioner may file its response thereon within three weeks thereafter.

5. The Petition shall be listed for hearing on **11.10.2023**.

By order of the Commission

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