

ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR-751 012

Present : Shri D.K.Roy, Chairman
Shri H.S. Sahu, Member

Case No.32 of 2001

M/s Grid Corporation of Orissa Ltd. **Petitioner**

- Vrs. -

1. M/s Central Electricity Supply Co. of Orissa Ltd.
2. M/s Union Bank of India, Main Branch, Bhubaneswar

.... **Respondents**

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|---------------------|---|------------------------------|
| For Petitioner | : | Mr. N.C. Panigrahi, Advocate |
| For Respondent No.1 | : | Mr. K.G. Raghavan, Advocate |
| For Respondent No.2 | : | Mr. S.K. Mohapatra, Advocate |

Date of argument : **24.07.2001**

Date of Order : **26.07.2001**

O R D E R

1. This proceeding arose out of an application filed by GRIDCO for appropriate direction by the Commission to CESCO to comply with the Commission's order dated 19.04.2001 in Case No.31/2001 and to comply with the terms of various agreements executed between GRIDCO and CESCO for commercial transactions.
2. The Commission while disposing of the application of GRIDCO for securitisation of its dues from CESCO has ordered, inter alia, on 19.04.2001,
 - (a) CESCO and GRIDCO must strictly follow the terms and conditions laid down in the agreements they have entered into for smooth functioning and settlement of commercial transactions.
 - (b) CESCO shall open Letter of Credit by 30th April as per the terms of the Bulk Supply Agreement and Loan Agreement.

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3. It has been submitted by GRIDCO that the CESCO has violated the orders of the Commission as indicated below:

- (i) CESCO has violated the terms of the Bulk Supply Agreement, Loan Agreement, Escrow Agreement and Supplementary Escrow Agreement in as much as it has not deposited all the collection of receivables made by way of sale of electricity to its consumers in the Escrow Account.
- (ii) That CESCO has defaulted in not transferring the funds deposited in the collection account regularly to the Escrow Account in the manner agreed to.
- (iii) CESCO has diverted the collection of receivables and spent it for other purposes, violating the terms of the Escrow Agreement.
- (iv) CMD, GRIDCO who is also the Chairman of CESCO called an Emergency Board Meeting of CESCO, which was held on 10.05.2001. The agenda note of the said meeting is enclosed in Annexure 5&6 to the petition. The above records show tat CESCO has diverted a sum of Rs.18.59 crores from the collection of receivable by not depositing the same in the Escrow Account. Director (Finance), CESCO has also further confirmed that a sum of Rs.5.50 crores have been diverted from Revenue collection for payment of salary for April, 2001.
- (v) Under the terms of the Bulk Supply Agreement, Loan Agreement and Escrow Agreement, CESCO is under legal obligation to establish the Letter of Credit for payment of Bulk Supply bills and Loan Installment to GRIDCO. The Commission has directed CESCO to open L.C. by 30th April 2001, as per terms of the Bulk Supply Agreement and Loan Agreement, but CESCO has not complied with the orders of the Commission by due date.

Such an action of the CESCO amounts to clear violation of the terms of Agreement and also of the orders of the Hon'ble Commission dated 19.04.2001.

4. In its reply, CESCO has submitted that CESCO requires a minimum of Rs.10 crores per month for payment of salaries, wages and other statutory dues and for maintenance of Distribution network. The day to day operations of CESCO are totally dependent on discharge of these obligations in default of which the company is likely to face the following consequences:
- (i) Labour unrest and strike of workmen.
 - (ii) Penal consequences for failure to discharge statutory dues under Labour Acts and related Acts.
 - (iii) Break down of distribution of power system and suspension of electricity to the consumers.
 - (iv) Loss or damage to property by disaffected consumers and workmen.
 - (v) Recall of existing loan and facilities and cancellation of Retail Supply License.
5. Further, since the execution of Escrow on 11th July, 2000, CESCO has made repeated efforts to secure funds from banks and other institution, to meet its day to day expenses but to no avail. Two loans were sanctioned in favour of CESCO as indicated below, but they are yet to be disbursed.
- (a) The Power Finance Corporation had sanctioned a loan of Rs.30 crores in September, 2000, but refused to disburse the same as Govt. of Orissa refused to allow PFC pari passu charge on the assets created from the World Bank Fund for cyclone restoration work. Additionally, PFC required a Pari pasu charge on the Escrow Amount, but to which GRIDCO has not agreed.
 - (b) The Union Bank of India sanctioned a term loan of Rs.6.5 crores in January, 2001 towards working capital. This loan has not been disbursed despite all formalities having been completed, as the Bank does not find CESCO's performance 'satisfactory', because of the fact that all its receivables are to be placed in Escrow.

6. CESCO has further submitted that its financial condition was further aggravated by the Super Cyclone of October, 1999, that caused substantial damage in the Licence area and destroyed 11,000 K.M. of lines in the Licence Area. The estimated cost of restoration of lost and damaged assets is approximately Rs.130 crores. CESCO has since incurred an unplanned expenditure of about Rs.59 crores to restore the assets and normalise the supply of electricity in the licence area.
7. CESCO requested GRIDCO to assist in making payment and to have Rs.10 crores released from the Escrow Account to meet its day to day expenses, like salary and maintenance. GRIDCO instructed the Escrow Agent to release an amount of Rs.10 crores from the Escrow Account to which the Escrow Agent refused. As instructed by the Board of Directors of CESCO, CESCO also sought the intervention of Govt. of Orissa for relaxation in Escrow Arrangement for meeting the cost of salary and maintenance till March 2002, but this was not agreed to by Govt.
8. As a result, CESCO was left with no option than to meet day to day expenses from the receipts and to that extent defaulted its financial obligations under Bulk Supply Agreement and Escrow Agreement. There was no willful violation of OERC order dated 19th April, 2001. Delay in compliance of the order is on account of unavoidable circumstances and reasonable cause.
9. As regards the Letter of Credit, CESCO submits that pursuant to the order of the Commission dated 19th April, 2001, CESCO requested the Escrow Agent to open a revolving L.C. in favour of GRIDCO for a sum of Rs.45.77 crores vide its letter dated 27th April, 2001. The Escrow Agent has responded to the request only after the dateline set by the Commission has expired vide its letter dated 16th May, 2001, seeking a lot of compliance to open LC. CESCO submits that it has undertaken its best efforts to supply the information sought by the Escrow Agent and is in the process of ensuring that the LC is made available to the applicant at the earliest.

10. We have heard the arguments of the Advocate for GRIDCO and Union Bank of India. GRIDCO and CESCO have entered into a Bulk Supply Agreement dated 18.09.1999 in terms of which the applicant supplies electricity in Bulk to CESCO, on the terms and conditions contained in the said Bulk Supply Agreement. CESCO is required to make payment to the applicant for the supply of electricity as per the provisions of the Bulk Supply Agreement alongwith the Orders that the Commission may pass from time to time.
11. GRIDCO and CESCO have also signed an Escrow Agreement on 11.07.2000 which inter alia provides:

"2. CESCO hereby irrevocably and unconditionally authorizes the Escrow Agent to receive all receivables, for the electricity sold or supplied by CESCO and payments from the consumers and purchases of the electricity capacity and or energy from CESCO in the CESCO Escrow Account to be maintained by the Escrow Agent at the Bhubaneswar Branch and for facilitating the due collection, CESCO agrees with the Escrow Agent that the receivables may be collected at the various branches of the Escrow Agent or designated bank accounts of any other bank in the State of Orissa with an irrevocable agreement that all such amounts received in the Bank's branches or in the branches of designated banks shall be fully remitted to the CESCO Escrow Account. Any cash received towards payment of any receivables of CESCO shall be deposited by CESCO in the above accounts entirely within 48 hours and shall not be utilized for any other purpose.

3. CESCO shall not collect, give or credit, or make any adjustment against the receivables directly or through any other person except as provided in clause 2 above and shall ensure that no other person is authorized to utilize or appropriate any part of the receivables.

4. CESCO hereby irrevocably and unconditionally authorizes the Escrow Agent to utilize the proceeds in the Escrow Account for payment to be made to Grid on the terms and conditions contained in the agreement and that all such payments to

GRIDCO shall be made to GRIDCO Escrow Account No.16051 maintained with the Escrow Agent”.

12. CESCO has admitted to have not deposited an amount of Rs.13.09 crores in Escrow Account as revealed in the minutes of the Emergency meeting of the Board of Directors of CESCO held on 10.05.2001. It has also diverted an amount of Rs.5.50 crores from revenue collection for payment of salary for the month of April, 2001. It is averred by CESCO that such diversion was unavoidable in order to meet the day to day expenses, without which there would have been labour unrest, strike of workmen, leading to suspension of electricity supply to the consumers.
13. However, in view of clear provision of BST and the Escrow Agreement, diversion of funds by CESCO from receivables without depositing the same in Escrow Account, however compelling the circumstances may be, is not justified. CESCO has indicated the compelling circumstances under which it was forced to divert funds from the 'receivable amount' instead of crediting the same to Escrow Account. But since there is no saving clause either the Bulk Supply Agreement or Escrow Agreement to allow for such diversion of funds, utilising a part of the receivables for other purpose is irregular.
14. Besides that, CESCO has not opened as yet the Letter of Credit, as required under clause 5.8.1 of the Bulk Supply Agreement, which provides that CESCO shall ensure that the Bank issues in favour of GRIDCO a letter of credit capable of being called or utilised by GRIDCO on simple demand to duly secure the payment of all the amounts becoming due and payable from CESCO to GRIDCO. The Commission had also ordered for opening of L.C. by 30th April, 2001.
15. Thus we find that CESCO is guilty of violating of the provisions of Bulk Supply Agreement and Escrow Agreement as well as the orders of the Commission dated 19.04.2001. The Advocate for CESCO has undertaken before us, that hence fourth there shall not be any breach of either Bulk Supply Agreement or Escrow

Agreement or Loan Agreement or Supplementary Escrow Agreement and they will not divert any part of the receivables for any other purpose and will deposit the entire receivables in Escrow Account. Subsequently an affidavit has been filed by the DGM (Finance) on behalf of CESCO where CESCO has given undertaking that all monies received by CESCO out of sale of energy from the consumers of electricity in the License Region will be faithfully deposited with the Escrow Agent in terms of the Escrow Agreement.

16. We have noted that CESCO had some genuine difficulty in fulfilling its obligations. But nothing explains the failure to open Letter of Credit and to remain silent on the same in the final affidavit filed before us. Secondly, in stead of contravening the terms of agreement almost nonchalantly CESCO should have negotiated with GRIDCO seeking waiver of terms to the desired extent or should have moved the Commission for granting them reprieve from implementing the order of the Commission. We however take a lenient view and decide not to initiate penal action against CESCO and observe that if any breach of the violation of contractual agreements entered into between GRIDCO and CESCO are brought to our notice in future and if there is a recurrence of ignoring Commission's order, we shall be compelled to initiate penal action against CESCO. We also further direct that CESCO and Union Bank should open Letter of Credit by 31st August, 2001 and report compliance by 10th September, 2001.

Sd/-
(H.S. SAHU)
MEMBER

Sd/-
(D.K. ROY)
CHAIRMAN