

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN, PLOT NO-4,
CHUNUKOLI, SHAILASHREE VIHAR,
CHANDRASEKHARPUR,
BHUBANESWAR - 751 021.**

**Present: Shri A. K. Das, Member
 Shri S. K. Parhi, Member**

Case No. 124/2010

M/s Rathi Steel & Power Ltd.	Petitioner
Vrs.		
GRIDCO Limited	Respondent

In the matter of: **Application under S.86 (1) (f) of the Electricity Act, 2003 for non-payment and /or lesser payment of the amount due for power supply from CGP.**

For Petitioner: Shri R. P. Mahapatra, the authorized representative on behalf of M/s. Rathi Steel and Power Limited, Shri Kushel Agarwal, M/s. Rathi Steel and Power Limited.

For Respondent: Shri A. K. Samantaray, GM (Elect.), GRIDCO Ltd. and Shri Tapas Pattnaik, DGM (Elect.), GRIDCO Limited

ORDER

Date of Hearing: 01.08.2017

Date of Order: 05.02.2017

1. The representative of the petitioner, M/s. Rathi Steel & Power Limited submitted that the petitioner was supplying power to GRIDCO from its 20 MW Captive Generating Plant (CGP) with effect from 23.03.2009 and GRIDCO was paying for the bills at price fixed by the Commission for CGP power, pending receipt of the data for the Co-generation status. But from the month of December, 2009 to June, 2010, GRIDCO did not make full payment of monthly energy bills towards the energy supplied from the CGP of the petitioner without citing any valid reasons. Hence, the Petitioner filed this petition before the Commission in August, 2010. The Commission in its interim order dated 20.09.2010, based on the prayer of GRIDCO, had allowed 15 days time to GRIDCO Ltd. i.e. upto 5th October, 2010 for settlement of the disputes on payment of bills of the petitioner. Further, the Commission in its order dated 29.12.2015 in Case No. 26/2015 (M/s. SMC Power Generation Ltd. Vrs. GRIDCO Ltd.) had also addressed all the issues pertaining to supply of power from CGPs and also directed GRIDCO Ltd. that the reconciliation statement would be prepared by GRIDCO as per directions within three weeks of order and copy should be submitted to the petitioner

with acknowledgement and reported to the Commission within one week thereafter. In that order the Commission had also mentioned that the issues addressed therein would also be applicable to similarly placed CGPs and Co-generation plants supplying their surplus power to GRIDCO Ltd. He further submitted that GRIDCO Ltd has not followed the orders of the Commission passed in various cases to make payment of the bills of the petitioner for procurement of surplus power from its CGP.

2. During the hearing, the representative of the petitioner stated that due to severe financial crunch, the CGP of the petitioner was closed since 2013 and the office of the petitioner was also shifted to Ghaziabad. He further stated that as per the reconciled statement furnished by GRIDCO, the amount due from them is around Rs.1.47 Crore whereas as per the calculation of the petitioner, the outstanding amounts is about Rs.3.87 Cr. payable by GRIDCO Ltd. Without making payment of the un-disputed amount of Rs.1.47 Cr., GRIDCO Ltd. has made reconciliation of the bills which is not agreed by the petitioner.
3. The representative of the petitioner M/s. Rathi Steel and Power Limited in its written submission has submitted that the respondent, GRIDCO forwarded the statement to the petitioner vide its letter dated 08.03.2016 with a request to attend their office on 17.03.2016 for reconciliation of energy bills for the period from 01.03.2009 to 16.02.2014. Accordingly, the petitioner attended the meeting. But no data was given to the petitioner to determine the quantum of inadvertent power/firm power/under scheduled power etc. as stated in the reconciliation statement. Further, the petitioner submitted that they do not agree with the fact that DPS is not payable as it forms a part of the Commission's order dated 29.08.2011 passed in Case No. 22/2011. However, the petitioner had requested GRIDCO to furnish the required data for verification of the statements. Since no data was received from GRIDCO, the petitioner was unable to submit its views on the reconciliation statement.
4. The representative of the petitioner has further submitted that there has been a very long delay in settlement of the dues receivable from GRIDCO. Considering the conduct of the respondent GRIDCO, over a long period of nearly seven years, the mutual settlement through reconciliation is not feasible. Hence, he has prayed the Commission to direct GRIDCO to pay the amount of Rs. 1.4675 Crore, which has been determined by the GRIDCO as payable to the petitioner and to refer the dispute on the balance amount including DPS to arbitration in accordance with Section 86 (1)

(f) and Section 158 of the Electricity Act, 2003 and Regulations 22 to 25 of the OERC (Conduct of Business) Regulations, 2004.

5. The representative of the GRIDCO Ltd. submitted that order dated 29.12.2015 passed in Case No. 26/2015 of the Commission was for M/s. SMC Power Generation Limited and accordingly GRIDCO Ltd. has reconciled its energy bills and made payments. GRIDCO has duly complied the directives of the Commission for reconciliation of the energy bills of the Petitioner. The reconciliation statement of the energy bills was forwarded to the petitioner on 08.03.2016 with a request to sit with CGM (PP), GRIDCO on 17.03.2016 for finalization. The representative of the Petitioner's firm attended the meeting, but asked for some more time for verification of the data at their end. Thereafter, there is no response from the petitioner in spite of several reminders from GRIDCO. Since the firm is totally non-responsive to the request of GRIDCO for finalization of the reconciliation statement so as to settle the issue, the argument of its representative for settling the issues through arbitration is not tenable.
6. GRIDCO further submitted that now there is ambiguity on the present status of M/s. Rathi Steel and Power Limited in terms of its location and address of the office. During hearing on 30.05.2017, the representative of the firm has intimated that the office of the firm has been shifted from Bhubaneswar to Sambalpur. However, as per Para-3 of the interim order dated 02.08.2017 the representative of the petitioner stated that due to financial crunch, the CGP of the petitioner has been closed since 2013 and office has also been shifted to Ghaziabad. Further, there is contradiction between the statement made by the firm in its letter dated 19.03.2016 requesting for 7-10 days time for verification of the data and the statement made by the representative of the petitioner at Para-8 of their submission dated 09.08.2017 that due to non-submission of required data by GRIDCO, the petitioner was unable to verify the statement and furnish its views. In addition, the firm has also taken three times adjournment of the hearing from July, 2016 to May, 2017, which indicates non-responsiveness of the firm to settle the dispute. The silence of the petitioner in spite of several communication by GRIDCO coupled with the statement on the closure of the CGP and shifting of the office leads to questioning the present status of the petitioner. The locus-standi of the firm along with the validity of the authorization for the representative needs to be ascertained and verified in line with Regulation 12 of the OERC (Conduct of Business) Regulations, 2004.

7. The representative of the GRIDCO Ltd. further stated that the prayer of the petitioner to pay the undisputed amount is not justified and sustainable as the Petitioner is yet to accept the reconciliation statement prepared by GRIDCO. The Petitioner is neither raising any deviation(s) in the said calculation/determination by GRIDCO nor there any communication from them on the discrepancy/deviation, if any, in the reconciliation statement. On the other hand, the petitioner is claiming for DPS on the outstanding amount, whereas GRIDCO Ltd. has moved to the Hon'ble Supreme Court on the matter of DPS claimed by the CGPs in such cases, which is now pending before the Hon'ble APEX Court.
8. GRIDCO prayed the Commission to direct the petitioner to comply the order of the Commission passed on dated 29.12.2015 in Case No. 26/2015 with regard to reconciliation of energy bills with GRIDCO Ltd. and sign the reconciliation statement after due verification and with their observations, if any, on the disputed amount. So that GRIDCO could be able to pay the undisputed amount.
9. Heard the parties. The oral and written submissions made by the parties are taken into the record. The Commission observed that this is a long pending billing dispute regarding sale of surplus power from the CGP of the petitioner to GRIDCO from the month of December, 2009 to June, 2010. The Commission vide its interim order dated 20.09.2010 passed in the present case had allowed 15 days time to GRIDCO to settle the matter as per the earlier CGP pricing orders of the Commission and report compliance. Further, during the hearing on 03.01.2015 GRIDCO prayed for four weeks more time to file its reply which was allowed by the Commission. Again during the hearing on 26.07.2016, 09.12.2016 and 30.05.2017 the petitioner M/s. Rathi Steel and Power Ltd. prayed for adjournment of hearing, which was also allowed by the Commission. In the meantime the Commission in its order dated 29.12.2015 passed in Case No. 26/2015 (M/s. SMC Power Generation Ltd. Vrs. GRIDCO Ltd.) had addressed all the issues pertaining to supply of power from the CGPs and indicated that the issues in that case are also to be applicable to the similarly placed CGPs and Co-generation plants supplying their surplus power to GRIDCO. In the present case the representative of GRIDCO has submitted that they have already reconciled the energy account towards procurement of surplus power from the CGP of the petitioner and forwarded the same to petitioner on 08.03.2016 with a request for a meeting on 17.03.2016 for finalization and acceptance by the petitioner. But the representative of the petitioner stated that the reconciliation

statement made by GRIDCO is not acceptable to them as GRIDCO had not furnished the required data for verification of the statement. There is a discrepancy in the statement between GRIDCO and Petitioner on the quantum of outstanding dues payable by GRIDCO.

10. Further, as per the oral submission of the authorized representative of the petitioner, its CGP has been closed since 2013 and its office has been shifted to Ghaziabad whereas as per his written submission on 30.05.2017 it is mentioned that all the notices in the present case may kindly be sent in the address - M/s. Rathi Steel and Power Ltd. (formerly Rathi Udyog Limited) PO- A.Katapalli-768006, Dist-Sambalpur (Odisha). GRIDCO has also submitted that in spite of requesting the petitioner several times with reminders, the petitioner is totally non-responsive to the request of GRIDCO for finalization of the reconciliation so as to settle the issue.
11. In view of the above, considering all the arguments of both the parties, GRIDCO is directed to serve reconciliation statement again on the Petitioner in its last known address at Sambalpur for their scrutiny and verification within one month from this order with due acknowledgement. If no response is received from the Petitioner within three months thereafter it would be presumed that the Petitioner has accepted the reconciliation statement and GRIDCO shall take steps for payment. If the Petitioner disputes the reconciliation statement both the parties should sit together and settle the issue. If dispute still persists they may come before the Commission in a separate petition with a prayer for arbitration under the Electricity Act, 2003.
12. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member